Senate Committee On

CRIMINAL JUSTICE

Mike Haridopolos, Chair
Rod Smith, Vice Chair

Meeting Packet

Tuesday, April 20, 2004
1:15 p.m. – 3:15 p.m.
37 Senate Office Building

(Please bring this packet to the committee meeting. Duplicate materials will not be available.)

E X P A N D E D A G E N D A

COMMITTEE ON CRIMINAL JUSTICE

Senator Haridopolos, CHAIR
Senator Smith, VICE-CHAIR

DATE: Tuesday, April 20, 2004
TIME: 1:15 p.m. -- 3:15 p.m.
PLACE: Room 37 (LL), Senate Office Building

(MEMBERS: Senators Argenziano, Crist, Dawson, Fasano, Hill, Lynn and Villalobos)

TAB	OFFICE AND APPOINTMENT	HOME CITY	FOR TERM ENDING	COMMITTEE ACTION
	A public hearing for consideration of the confirmation of the below-named executive appointment to the office indicated. (All persons wishing to be heard on this appointment are requested to notify the committee administrative assistant at (850) 487-5192 on the day preceding the hearing.)			
1	Executive Director of Department of Law Enforcement Guy M. Tunnell	Tallahassee	Pleasure of Governor and Cabinet	

TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
2	SB 1324 Campbell (Similar H 0521)	Vehicular Homicide; provides that operating motor vehicle without having slept within preceding 24 hours creates rebuttable presumption that person is operating vehicle in reckless manner for purposes of vehicular-homicide provisions. Amends 782.071. CJ 04/20/04 JU TR RC	
3	A proposed committee substitute combining the following two bills (SB 2796 and CS/SB 1418) will be considered.		
4	SB 2796 Sebesta (Compare H 1637)	Animal Cruelty; increases criminal penalties for certain acts of animal cruelty; increases certain minimum mandatory fines & periods of incarceration; redesignates offense re intentional torture of animals in offense severity ranking chart for purposes of specifying criminal penalties under Criminal Punishment Code. Amends 828.12, 921.0022. ***(A proposed committee substitute is expected to be filed prior to the amendment deadline.)*** AG 03/24/04 FAVORABLE CJ 04/13/04 Temporarily postponed CJ 04/20/04	

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5	CS/SB 1418 Agriculture / Aronberg et al (Compare H 1637)	Cruelty to Animals/Bovines; provides definition; provides that it is third-degree felony for person to intentionally drag or fell by tail a bovine animal in organized sports exhibition; provides clarification re techniques or practices that are not prohibited. Amends 828.121. ***(A proposed committee substitute is expected to be filed prior to the amendment deadline.)*** AG 04/13/04 CS CJ 04/20/04	
6	CS/SB 1772 Children and Families / Lynn (Similar H 0721, H 1823, CS/S 2808)	Sexual Misconduct; defines terms "employee," "sexual activity," & "sexual misconduct"; provides that it is second-degree felony for employee to engage in sexual misconduct with certain developmentally disabled clients, certain mental health patients, or certain forensic clients; requires certain employees to report sexual misconduct to central abuse hotline of CFS Dept. & law enforcement; provides for notification to inspector general of dept., etc. Amends FS. CF 03/30/04 CS HC 04/14/04 WITHDRAWN CJ 04/20/04 JU	
7	CS/SB 1820 Home Defense, Public Security, and Ports / Home Defense, Public Security, and Ports	Seaport Security Standards; provides for legislative review of seaports not in substantial compliance with statewide minimum security standards by November 2005; requires Legislature to review certain security costs; prohibits expenditure of state funds without certification of need by Office of Ports Administrator within FDLE. Amends 311.12. HP 03/29/04 CS CJ 04/20/04	
8	CS/SB 2160 Health, Aging, and Long-Term Care / Peaden (Compare H 1815)	Controlled Substances; revises chemicals defined as "listed precursor chemicals" to include benzaldehyde, hydriodic acid, & nitroethane, & to remove anhydrous ammonia & benzyl chloride; prohibits person from manufacturing methamphetamine or phencyclidine, or possessing listed chemicals with intent to manufacture such chemicals; includes offenses involving pseudoephedrine or ephedrine within offense of trafficking in amphetamine, etc. Amends FS. HC 03/30/04 CS CJ 04/20/04 ACJ AP	

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9	SB 2408 Webster (Similar H 1933)	Talent Agencies & Advance-fee Svcs.; revises, provides, & deletes definitions applicable to regulation of talent agencies & advance-fee talent services; specifies prohibited acts; requires posting of maximum fee, charge & commission schedules or inclusion of such schedules in written contracts; requires background checks & fingerprinting of owners & operators; specifies acts that constitute crimes; abolishes regulation of talent agencies by DBPR, etc. Amends Ch. 468. RI 03/31/04 FAVORABLE CJ 04/20/04 JU FT AGG AP	
10	SB 2424 Crist (Compare H 1543)	Sex Offender/Probation & Control; prohibits sex offender from having unsupervised contact with child younger than 18; authorizes court to approve supervised contact if offender successfully completes treatment program, risk assessment is prepared, & adult responsible for child's welfare supervises contact; requires that supervising adult be provided with safety plan prepared by offender's sex therapist. Amends 948.03. CJ 04/20/04 JU ACJ AP	
11	CS/SB 2524 Home Defense, Public Security, and Ports / Hill (Linked S 2526, Similar H 1683)	Seaport Security Standards; requires that each seaport security plan have procedure that notifies individual that he or she is disqualified from employment within, or regular access to, seaport or seaport's restricted access area; provides that certain seaport workers holding credentials on June 3, 2003, shall not have seaport access denied; provides for future repeal, etc. Amends 311.12,.125. HP 03/29/04 CS CJ 04/20/04 JU TR GO	

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 2616 Natural Resources / Atwater (Similar H 1185)	WMDs/Screenings/Public Safety; authorizes water management districts to require screening of employee, appointee, or applicant for position critical to security or public safety; authorizes screening of contractor or employee thereof, vendor, repair person, or delivery person who has access to certain public facilities; requires that fingerprints of applicants & employees be submitted to FDLE & FBI for check of criminal history records, etc. Creates 373.6055. NR 03/30/04 CS HP 04/16/04 FAVORABLE WITH AMEND 1 CJ 04/20/04	
13	SB 2626 Crist	Interstate Compact for Juveniles; revises provisions of former Interstate Compact on Juveniles; provides for Interstate Commission for Juveniles; provides for qualified immunity from liability for commissioners, executive director, & employees; requires member states to create State Council for Interstate Juvenile Supervision; provides for assistance, certain penalties, suspension, or termination following default by state, etc. Amends 985.502; repeals 985.503-.507. CJ 04/20/04 GO JU ACJ AP	
14	CS/SB 2664 Natural Resources / Smith (Similar H 1613)	Vessel Safety; provides exception for purposes of law enforcement to provisions requiring display of lighted lamps; provides legislative intent to authorize state & local law enforcement agencies to operate in federally designated safety zones, security zones, regulated navigation areas, & naval vessel protection zones; prohibits entrance to such zone by swimming, diving, wading, or similar means, etc. Amends Ch. 327, 316.217, 901.15. NR 03/22/04 CS HP 04/16/04 FAVORABLE CJ 04/20/04 AGG AP	
15	SB 2762 Smith (Similar H 1311)	Driving Under Influence; provides for using certain records of Highway Safety & Motor Vehicles Dept. as evidence establishing existence of certain previous violations; provides for rebutting or contradicting of such evidence. Amends 316.193. JU 04/12/04 FAVORABLE CJ 04/20/04	

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TAB	BILL NO. AND INTRODUCER	BILL DESCRIPTION AND SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	SB 3106 Villalobos (Compare H 0623, CS/CS/S 1946)	Juvenile Justice; amends & redesignates various provisions re juvenile justice; deletes references to personnel standards & screening & authority of Juvenile Justice Dept. to enter into certain contracts; creates provision re legislative intent for juvenile justice system; creates provision re rights of victims in juvenile proceedings; creates provision re prearrest or postarrest diversion program, etc. Amends & redesignates Ch. 985. CJ 04/20/04 ACJ AP	

PENDING RECONSIDERATION:

17	SB 2414 Sebesta (Identical H 1103, Compare H 0377, S 1876)	Active Construction Work Zone Act; cites act as "Active construction Work Zone Safety Act of 2004"; provides that photo speed detection system requirements & testing procedures be reviewed & approved by HSMV; requires obedience to posted speed limit in active zone; requires advance warning signs to notify drivers of photo speed detection system; provides for training & qualifications of photo speed detection enforcement officers, etc. Amends Ch. 316, 318.14,.18,.21. TR 03/23/04 FAVORABLE WITH AMEND 1 CJ 04/13/04 Pending reconsideration (Unf CJ 04/20/04 FT ATD AP RC	

1

1385

SET 9
EXECUTIVE APPOINTMENT REFERRAL DATE: 10/08/2003

APPOINTEE: Guy M. Tunnell

BOARD: Executive Director of Department of Law Enforcement

Referred to: Committee on Criminal Justice
Committee on EE

1385
CJ

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Glenda E. Hood, Secretary of State
of the State of Florida, do hereby certify that

Guy M. Tunnell

is duly appointed

Executive Director,
Department of Law Enforcement

for a term beginning on the
First day of October, A.D., 2003,
to serve at the pleasure of the Governor and Cabinet
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Twenty-Fifth day of September, A.D., 2003.

Glenda E. Hood

Secretary of State

DSDE 99 (1/03)

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com
850-488-7146
850-487-0801 fax

JEB BUSH
GOVERNOR

August 27, 2003

Ms. Glenda Hood, Secretary
Department of State
Collins Building, Room 255
107 West Gaines Street
Tallahassee, Florida 32399-0250

Dear Secretary Hood:

Please be advised that the Cabinet and I have made the following appointment under the provisions of Section 20. 201, Florida Statutes:

The Honorable Guy M. Tunnell
Sheriff of Bay County
1205 East 24th Street
Lynn Haven, Florida 32444

as Executive Director of the Florida Department of Law Enforcement, succeeding James "Tim" Moore, subject to confirmation by the Senate. This appointment is effective October 1, 2003 for a term ending at the pleasure of the Governor and Cabinet.

Sincerely,

Jeb Bush

JB/mk

cc: The Honorable Charlie Crist

Act #: 2519 Office/Type: GESOHLAW

Name: _____

Circle One: BER DSK WAI KEY

Report: _____ Seq #: _____ Processed By: _____

Comments: proc 11838-2

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate.

Please type or print in blue or black ink.

09/17/03
Date Completed

1. Name: Mr. (MR./MRS./MS.) Tunnell (LAST) Guy (FIRST) Maxwell (MIDDLE/MAIDEN)

2. Business Address: 3421 N. Highway 77 (STREET) (OFFICE #) Panama City (CITY)
Florida (STATE) 32405 (ZIP CODE) (850) 784-4700 (AREA CODE/PHONE NUMBER)
(POST OFFICE BOX)

3. Residence Address: 1205 East 24th Street (STREET) Lynn Haven (CITY) Bay (COUNTY)
FL (STATE) 32444 (ZIP CODE) (850) 769-1315 (AREA CODE/PHONE NUMBER)
(POST OFFICE BOX)

Specify the preferred mailing address: Business ☒ Residence X Fax # _____ (optional)

4. A. List all your places of residence for the last five (5) years.

ADDRESS	CITY & STATE	FROM	TO
1205 East 24th Street	Lynn Haven, FL	03/96	Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

ADDRESS	CITY & STATE	FROM	TO
N/A			

5. Date of Birth: 08/16/51 Place of Birth: Panama City, FL

6. Social Security Number: _____

7. Driver License Number: T540-293-51-296-0 Issuing State: FL

8. Have you ever used or been known by any other legal name? Yes ☒ No X If "Yes" Explain

9. Are you a United States citizen? Yes ☒ No ☐ If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1963

11. Are you a registered Florida voter? Yes ☒ No ☐ If "Yes" list:

A. County of Registration: Bay B. Current Party Affiliation: Republican

12. Education

A. High School: Oak Ridge High School Year Graduated: 1969
(NAME AND LOCATION)

B. List all postsecondary educational institutions attended:

NAME & LOCATION	DATES ATTENDED	CERTIFICATES/DEGREES RECEIVED
St. Johns River Jr. College, Palatka, FL	1969-71	AA Degree
FL Tech University, Orlando, FL	1972	-
Rollins College, Winter Park, FL	1973-74	BS Degree
Rollins College, Winter Park, FL	1974-77	MS Degree

13. Are you or have you ever been a member of the armed forces of the United States? Yes ☒ No ☒ If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of $150 or less was paid.) If "Yes" give details: Yes ☒ No ☐

DATE	PLACE	NATURE	DISPOSITION
1970	Palatka, FL	Disturbing Peace	Aquitted

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

EMPLOYER'S NAME & ADDRESS	TYPE OF BUSINESS	OCCUPATION/JOB TITLE	PERIOD OF EMPLOYMENT
Bay County Sheriff's Ofc 3421 N. Highway 77 Panama City, FL 32405	Law Enforcement	Sheriff	01/89 - Present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes ☒ No ☒
If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

POSITION	EMPLOYING AGENCY	PERIOD OF EMPLOYMENT
Deputy/Detective	- Orange County Sheriff's Office	06/73 - 10/78
Detective	- Bay County Sheriff's Office	10/78 - 01/84
Chief	- Lynn Haven Police Department	04/84 - 12/88
Sheriff	- Bay County Sheriff's Office	01/89 - Present

SEP 2 ? 2003

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

30+ years law enforcement career; 19 years law enforcement administration; Extensive Career Enhancement Training, including; Florida Chief Executive Seminar (CJST), FBI National Academy.

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

BS & MS in Criminal Justice (1974, 1977)

Florida Police Standards Certification (1973)

FBI National Academy Graduate (1999)

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes ☒ No ☐ If "Yes", list:

1987 Outstanding Young Law Enforcement Officer (Panama City, FL Jaycees); Past Board Chairman & President (Florida Sheriffs Association).

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Sheriffs Association (see #C above); Florida Sheriffs Youth Ranches (Committee Memberships); Florida Police Chiefs Association.

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes ☐ No ☒ If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes ☒ No ☐ If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

OFFICE TITLE	DATE OF ELECTION OR APPOINTMENT	TERM OF OFFICE	LEVEL OF GOVERNMENT
Sheriff	1989 - Present	4 Years (4 Terms)	County

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B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: _____

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

MEETINGS ATTENDED	MEETINGS MISSED	REASON FOR ABSENCE
N/A		

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes ☐ No ☒ If "Yes", give details:

DATE	NATURE OF VIOLATION	DISPOSITION
N/A		

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes ☐ No ☒ If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____

B. Date of suspension: _____ D. Result: Reinstated ☐ Removed ☐ Resigned ☐

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes ☐ No ☒ If "Yes", list:

A. Title of Office: _____

B. Term of Appointment: _____

C. Confirmation results: _____

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes ☐ No ☒ If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes ☒ No ☐ If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

LICENSE/CERTIFICATE TITLE & NUMBER	ORIGINAL ISSUE DATE	ISSUING AUTHORITY	DISCIPLINARY ACTION/DATE
Basic Training	8-24-73	Florida Criminal Justice Standards	N/A

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☐ No ☒ If "Yes", explain:

NAME OF BUSINESS	YOUR RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY
N/A		

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B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes ☒ No ☒ If "Yes", explain:

NAME OF BUSINESS	FAMILY MEMBER'S RELATIONSHIP TO YOU	FAMILY MEMBER'S RELATIONSHIP TO BUSINESS	BUSINESS' RELATIONSHIP TO AGENCY (DEM)
Aggreko	Jason Tunnell (son)	Salesman	Submitted Proposals

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes ☒ No ☒

A. Did you receive any compensation other than reimbursement for expenses? Yes ☒ No ☒

B. Name of agency or entity you lobbied and the principal(s) you represented:

AGENCY LOBBIED	PRINCIPAL REPRESENTED
Legislature	Florida Sheriffs Association

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

NAME	MAILING ADDRESS	ZIP CODE	AREA CODE/PHONE NUMBER
Greg Brudnicki	2403 Harrison Ave, Panama City, FL	32401	850-769-3396
Earl Durden	2605 Thomas Dr, Panama City Bch, FL	32408	850-230-8331
Gary Bellamy	2110-B W 23rd St, Panama City, FL	32405	850-785-7528
Charles Whitehead	P.O. Box 16689, Panama City, FL	32406	850-784-0400 Ofc #

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

NAME	MAILING ADDRESS	OFFICE(S) HELD & TERM	DATE(S) OF MEMBERSHIP
Lynn Haven Rotary	PO Box 9, Lynn Haven, FL 32444		1985 - Present
Harry Jackson Lodge, #314	720 Florida Ave, Lynn Haven		1982 - Present
Panama City Valley of Scottish Rite	1332 Fortune Ave, Panama City, FL 32401		1985 - Present
Shaddai Shrine Temple	1101 W 19th St, Panama City 32405		1985 - Present
FL FBI/NA Associates	7820 Arlington Expressway, Jacksonville, FL 32211		1999 - Present

* See Bottom, cont.

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes ☒ No ☒ If "Yes", explain:

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30. If required by law or administrative rule, will you file financial disclosure statements? Yes ☒ No ☒

* (#28, cont)
Anchorage Children's Home / 2121 Lisenby Ave, PC, FL 32405 1990 - Present
At-large Member of the Exec Com 2000-02 / Secretary 2000-03 (would be '04)
Bay County Boys & Girls Club / PO Box 914, PC, FL 32402 1989 - Present
American Heart Association, Bay Cnty / 2697 Jenks Ave, PC,FL 32405/Walk Chairman 2002
Gulf Coast Community College Foundation/5230 W Hwy 98, PC,FL 32405/ 1989 - Present

CERTIFICATION

STATE OF FLORIDA, COUNTY OF Bay

Before me, the undersigned Notary Public of Florida, personally appeared Guy M. Tunnell, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Signature of Applicant-Affiant

Sworn to and subscribed before me
this 17th day of September, 2003.

Signature of Notary Public-State of Florida

Barbara H. Bell
(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: January 23, 2006

Personally Known X OR Produced Identification ☒

Type of Identification Produced _____

BARBARA H. BELL
MY COMMISSION EXPIRES
January 23, 2006
#DD 086011
Bonded thru
Notary Public Underwriters
NOTARY PUBLIC, STATE OF FLORIDA

(seal)

SEP 23 2003

2

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1324

SPONSOR: Senator Campbell

SUBJECT: Vehicular Homicide

DATE: April 12, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	
2.			JU	
3.			TR	
4.			RC	
5.				
6.				

I. Summary:

Senate Bill 1324 creates a *rebuttable presumption* for one of the elements that the State must prove beyond a reasonable doubt in a vehicular homicide case. The "reckless operation" of a motor vehicle element may be presumed, under this bill, by proof that the defendant had not slept within the 24 hours preceding the commission of the crime.

This bill substantially amends the following section of the Florida Statutes: 782.071, F.S.

II. Present Situation:

Vehicular Homicide

Section 782.071, F.S., currently allows prosecution and punishment of a defendant whose reckless driving causes the death of a human being or the death of a viable fetus by any injury to the mother. Vehicular homicide is a second degree felony, punishable by up to 15 years imprisonment, although it may be a first degree felony under certain circumstances such as failing to render aid or provide information when the defendant knew or should have known that the accident occurred.

The vehicular homicide statute conveys a right of action for civil damages under the Wrongful Death Act, s. 768.19, F.S.

The reckless element required to prove vehicular homicide is a lesser standard than the culpable negligence standard required for proof under the manslaughter statute, s. 782.07, F.S., *McCreary v. State*, 371 So. 2d 1024, 1026 (Fla. 1979). Manslaughter, which can also serve as a basis for a charge against a driver, is punished as a second-degree felony (15 year maximum sentence).

Culpable negligence under manslaughter requires proof of a "gross and flagrant character, evincing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or there is that entire want of care which would raise the presumption of a conscious indifference to consequences." *Id.* The court has defined recklessness under the vehicular homicide statute as that "where the degree of negligence falls short of culpable negligence but where the degree of negligence is more than a mere failure to use ordinary care." *Id.*

In *McCreary*, the court held that the state established the reckless element in vehicular homicide where the defendant ran a stop sign causing the death of one of his passengers and the evidence showed that the stop sign was clearly visible from a distance of 300 to 400 feet; the defendant, (although not intoxicated), had consumed several glasses of beer just prior to the accident, and the defendant drove into the intersection without slowing down. *Id.* at 1025.

However, momentary inattentiveness alone is insufficient to support a reckless driving or vehicular homicide conviction. *State v. Esposito,* 642 So. 2d 25 (Fla. 4th DCA 1994). In *Esposito*, the defendant, a bus driver, struck and killed a pedestrian in a crosswalk, had an unobstructed view, was traveling at only 15 mph, and an expert concluded that the defendant failed to look for pedestrians and was not paying attention. If the state is only able to show a failure to use ordinary care, then it will not obtain a conviction for vehicular homicide. *Id.*

Burden of Proof – Due Process – Rebuttable Presumptions in Criminal Law

The Florida Standard Jury Instructions in Criminal Cases (as amended through May 9, 2002, 824 So.2d 881) provide for the following instructions to the jury in a vehicular homicide trial:

> To prove the crime of Vehicular Homicide, the State must prove more than a failure to use ordinary care, and must prove the following three elements beyond a reasonable doubt:
>
> 1. (Victim) is dead;
> 2. The death was caused by the operation of a motor vehicle by (defendant).
> 3. (Defendant) operated the motor vehicle in a reckless manner likely to cause the death of or great bodily harm to another person.
>
> An intent by the defendant to harm or injure the victim or any other person is not an element to be proved by the State.

It is the State's burden to prove every element that constitutes a crime beyond a reasonable doubt. The burden of proof must not shift to the defendant.

In the trial of criminal cases, certain evidentiary "tools" are recognized. These are called presumptions (of fact) and inferences (of one fact based upon the proof of another).

A *mandatory presumption* instructs the jury (the "fact-finder" in a trial) that it *must* infer the presumed fact if the State proves certain predicate facts. *Francis v. Franklin,* 471 U.S. 307, 314 n.2 (1985). A *mandatory rebuttable presumption* requires the jury to find the presumed element once the State has proven the predicate facts giving rise to the presumption, unless the defendant persuades the jury that such a finding is unwarranted. *Id.* at 314, n. 2. Mandatory presumptions

violate the Due Process Clause if they relieve the State of the burden of persuasion on an element of the offense being tried. *Id.* at 314; *State v. Brake,* 796 So.2d 522 (Fla. 2001).

Contrasting a *permissive inference*, with a mandatory presumption – the inference *allows*, but does not require, the trier of fact to infer an elemental fact upon proof of a basic fact and places no burden of proof on the defendant. *Marcolini v. State,* 673 So.2d 3 (Fla. 1996) (see also *Franklin,* 471 U.S. at 314 (1985): A permissive inference *suggests to the jury a possible conclusion* to be drawn if the State proves predicate facts, but *does not require* the jury to draw that conclusion. *emphasis added*)

In 1990, in the *Rolle* case, the Florida Supreme Court found that one of the elements in the DUI/DUBAL statute created a permissive inference, and did not require the jury to make a finding of fact, and was therefore constitutional. Specifically, the statute was worded as follows:

> If there was at the time 0.10 percent or more by weight of alcohol in the person's blood, that fact *shall be prima facie evidence* that the person was under the influence of alcoholic beverages to the extent that his normal faculties were impaired. s. 316.1934(2), F.S. (1985).

In the trial of the felony DUI case, the court instructed the jury as follows: "If you find from the evidence that the Defendant had a blood alcohol level of .10 percent or more, that evidence *would be sufficient by itself to establish* that the Defendant was under the influence of alcohol to the extent that his normal faculties were impaired. However, such evidence may be contradicted or rebutted by other evidence." *State v. Rolle,* 560 So.2d 1154 (Fla. 1990) (emphasis added).

The Supreme Court found that the statute and the jury instruction derived from it created a permissive inference, not a mandatory presumption, and was, therefore, constitutional. *Id. at 1157.*

A different result was reached by the Supreme Court of Florida in 2001, however, as it related to the language of the luring or enticing a child statute. *State v. Brake,* 796 So.2d 522 (Fla. 2001). The language before the court for review, in s. 787.025(2)(b), F.S., stated in part:

> For purposes of this section, the luring or enticing, or attempted luring or enticing, of a child under the age of 12 into a structure, dwelling, or conveyance without the consent of the child's parent or legal guardian *shall be prima facie evidence* of other than a lawful purpose.

The court found this language did not meet constitutional muster. The court cited the U.S. Supreme Court case of *Leary v. United States,* 395 U.S. 6 (1969) which stated: "a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Id.* at 36

The Florida Supreme Court, in the *Brake* case, noted that the Defendant's unlawful intent element of the offense of luring a child was proven under the statute by the presumption based on the proof of lack of parental consent. The court stated that it *could not find with substantial*

assurance that the Defendant's unlawful intent could be so presumed, therefore that subsection of the luring statute was unconstitutional. *Id.* at 529.

Pending Legislation

The Senate is considering legislation at the time of this writing that would amend the language of the luring and enticing statute (s. 787.025, F.S.) discussed above to correct the constitutional infirmity. (see Committee Substitute for Senate Bill 218 and the companion House Bill 1713) The pertinent language in the current bills reads as follows: (Note: bold text represents new language underlined in bill.)

> **If the defendant lured or enticed, or attempted to lure or entice,** a child under the age of **16** into a structure, dwelling, or conveyance without the consent of the child's parent or legal guardian, **that fact does not give rise to a presumption that the defendant committed or attempted to commit such luring or enticing for** other than a lawful purpose, **but may be considered with other competent evidence in determining whether the defendant committed or attempted to commit such luring or enticing for other than a lawful purpose.**

(see also current s. 893.13(8)(b), F.S., for similar language as it relates to prescription drug fraud.)

III. Effect of Proposed Changes:

Senate Bill 1324 creates a *rebuttable presumption* for one of the elements that the State must prove beyond a reasonable doubt in a vehicular homicide case. The "reckless operation" of a motor vehicle element may be presumed, under this bill, by proof that the defendant had not slept within the 24 hours preceding the commission of the crime.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As discussed extensively in the Present Situation section above, the presumption created in this bill may not survive a challenge based on Due Process grounds, as there is at least an argument that it cannot be said with substantial assurance that the presumed fact

(recklessness) is more likely than not to flow from the proved fact (lack of sleep in 24 hours). *Leary v. United States,* 395 U.S. 6 (1969); *State v. Brake,* 796 So.2d 522 (Fla. 2001).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not considered this bill with regard to its potential impact on prison beds, but it is not likely that a significant impact would result from its passage.

VI. Technical Deficiencies:

It is suggested that the language be amended in two respects: one, to eliminate the rebuttable presumption in favor of language similar to that set forth in CS for SB 218; and two, to clarify that the bill is specifically addressing the 24 hour period just preceding the episode that resulted in the death. This second suggestion would allow for situations where a victim lingers for some extended period of time before the death occurs which triggers the vehicular homicide charge.

VII. Related Issues:

None.

VIII. Amendments:

None.

3

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: PCS for SB's 2796 and 1418

SPONSOR: Committee on Criminal Justice, Senators Sebesta, Aronberg, and Campbell

SUBJECT: Cruelty to Animals

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable (SB 2796)
2.	Weidenbenner	Poole	AG	Fav/CS (SB 1418)
3.	Cellon	Cannon	CJ	
4.				
5.				
6.				

I. Summary:

Section 828.12, F.S., is amended to increase the minimum fine from $2,500 to $5,000 in cases of knowing and intentional torture that injures, mutilates, or kills the animal and provides for 6 months in jail in such a case. Where an offender is before the court for sentencing on a second or subsequent felony violation of s. 828.12, F.S., the jail time is increased from 6 months to 10 months.

It creates a prohibition against intentionally dragging or felling by the tail a bovine animal in an organized sports exhibition and makes a violation a felony of the third degree. The bill designates the current misdemeanor violation of the prohibition against simulated or bloodless bullfighting exhibitions a misdemeanor of the second degree.

The bill specifically excludes rodeo and animal husbandry practices that are not otherwise prohibited by law from the provisions in section 2 of the bill.

This bill substantially amends the following sections of the Florida Statutes: 828.12 and 828.121.

II. Present Situation:

A person commits a misdemeanor of the first degree, punishable by up to one year incarceration or a fine of not more than $5,000 or both, if he unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter or unnecessarily mutilates, or kills an animal. s. 828.12(1). F.S. Deprivation of medical attention or sanitation are not currently specified elements of the crime.

A person commits a felony of the third degree, punishable by up to five years imprisonment or by a fine of not more than $10,000 or both, for an intentional act which results in the cruel death of an animal, or excessive or repeated infliction of unnecessary pain or suffering on an animal. s. 828.12(2), F.S.

The Legislature amended the felony provisions in 2002 to include a minimum mandatory fine of $2,500, and psychological counseling or an anger management treatment program where it is found that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal. s. 828.12(2)(a), F.S. Further, if a person commits a second or subsequent felony offense of cruelty to animals, a minimum fine of $5,000 and six months in jail are required as part of the sentence. s. 828.12(2)(b), F.S.

It has been reported that a sport known as bulltailing is being conducted in Florida. From information gathered, the activity consists of two horse-mounted contestants chasing a bull up and down an oblong arena, competing to flip the animal over by using its tail. In the process of jerking the animal (through the accelerated speed of the horse) off its feet, the animal is often jarred to the point of disorientation, tails are broken, and sometimes even legs. The animal is prodded with a shocking device to force it to its feet, injuries notwithstanding, so that it can be forced to the ground repeatedly. The apparent object of the sport is to score points by felling the animal a certain number of times within a certain limited time period.

Purposely tripping or felling a horse by its legs is currently punished as a third degree felony in Florida. s. 828.12(4), F.S.

It is a misdemeanor of an undesignated degree to conduct a simulated or bloodless bullfight in Florida. *C.E. America, Inc. v. Antinori,* 210 So.2d 443 (Fla. 1968). The crime has existed since1971, although it has never been specified as a first or second degree misdemeanor – the statute simply states that it is "punishable as a misdemeanor." s. 828.121, F.S

III. Effect of Proposed Changes:

Section 828.12, F.S., is amended to increase the minimum fine from $2,500 to $5,000 in cases of knowing and intentional torture that injures, mutilates, or kills the animal and provides for 6 months in jail in such a case. Where an offender is before the court for sentencing on a second or subsequent felony violation of s. 828.12, F.S., the jail time is increased from 6 months to 10 months. Language is deleted from s. 828.12(2)(b), F.S., which usually applies to state prison sentences, while the penalties set forth in that section will most likely be limited to county jail time.

The bill amends s. 828.121, F.S., to define the term "bovine animal" to mean an animal of the subfamily bovine and includes, but is not limited to, a steer, calf, bull, ox, heifer, or cow.

It creates a prohibition against intentionally dragging or felling by the tail a bovine animal in an organized sports exhibition and makes a violation a felony of the third degree. The crime is not ranked in the Criminal Punishment Code, therefore would default to a Level 1. It is highly unlikely that an offender would score incarceration as a lowest permissible sentence unless the person has a significant criminal history or other pending charges.

The bill designates the current misdemeanor violation of the prohibition against simulated or bloodless bullfighting exhibitions a misdemeanor of the second degree.

The bill specifically excludes rodeo and animal husbandry practices that are not otherwise prohibited by law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

An offender who has committed felony violations of the laws against animal cruelty will pay higher fines.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

The Department's Bureau of Research and Data Analysis reports there were 58 admissions to community supervision and 18 admissions to prison for law violations which included felony animal cruelty during the fiscal year 2002-2003.

A term of incarceration of one year or less, is served in county jail. The provisions of the bill which create and increase mandatory minimum terms of incarceration, should result in offenders being sentenced to 6 or 10 months incarceration where they would have otherwise served less or no time in jail and therefore have some minimal impact on the county jail population.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
PROPOSED COMMITTEE SUBSTITUTE FOR
Senate Bills 2796 and 1418

Combines SB 2796 with CS/SB 1418 with the following Modifications:

- The provision in SB 2796 that changed first degree misdemeanor animal cruelty violations to third degree felonies is not in the PCS.

- The provision in SB 2796 that elevated third degree felony animal cruelty violations to second degree felonies is not in the PCS.

- Language in current law (s. 828.12(2)(b), F.S.) that was not deleted in SB 2796 is deleted in the PCS. The language is consistently applied throughout the statutes as they relate to mandatory state prison sentences. The sentences designated in current law and the PCS are of the length that would normally result in county jail time, not state prison time.

- The Criminal Punishment Code Offense Severity Ranking Chart is not modified by the PCS. SB 2796 had elevated felony violations of s. 828.12, F.S., from a Level 3 to a Level 4.

- There are no substantial changes made to CS/SB 1418 other than its combination with SB 2796.

Committee on Criminal Justice

Staff Director

(FILE TWO COPIES WITH THE SECRETARY OF THE SENATE)

CRIMINAL JUSTICE
DATE: 4/15/04
TIME: 4:30 p.m.

A bill to be entitled

An act relating to cruelty to animals; amending s. 828.12, F.S.; increasing certain minimum mandatory fines and periods of incarceration for certain acts of cruelty to animals; amending s. 828.121, F.S.; providing a definition; providing that it is a third-degree felony for a person to intentionally drag or fell by the tail a bovine animal in an organized sports exhibition; providing clarification regarding techniques or practices that are not prohibited; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (2) of section 828.12, Florida Statutes, are amended to read:

828.12 Cruelty to animals.--

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, <u>commits</u> ~~is guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than $5,000, or both.

(2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, <u>commits</u> ~~is guilty of~~ a felony of

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000, or both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of $5,000, shall be sentenced to a minimum mandatory term of incarceration of 6 months, ~~$2,500~~ and shall undergo psychological counseling or complete an anger management treatment program.

(b) Any person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of $5,000 and shall be sentenced to a minimum mandatory term of incarceration of 10 months ~~and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, shall not be eligible for parole, control release, or any form of early release, and must serve 100 percent of the court imposed sentence~~. Any plea of nolo contendere shall be considered a conviction for purposes of this subsection.

Section 2. Section 828.121, Florida Statutes, is amended to read:

828.121 Conduct of simulated bullfighting exhibitions; bulltailing.--

(1) As used in this section, the term "bovine animal" means an animal of the subfamily bovine and includes, but is not limited to, a steer, calf, bull, ox, heifer, or cow.

(2) A ~~It shall be unlawful, and punishable as a misdemeanor, for any~~ person may not ~~to~~ conduct or engage in a simulated or bloodless bullfighting exhibition.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

(3) A person may not intentionally drag or fell by the tail a bovine animal in an organized sports exhibition.

(4)(a) A person who violates subsection (2) commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) This section does not prohibit or otherwise restrict recognized rodeo or animal husbandry and training techniques or practices that are not otherwise prohibited by general law.

Section 3. This act shall take effect July 1, 2004.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2796

SPONSOR: Senator Sebesta

SUBJECT: Animal Cruelty

DATE: April 2, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Poole	AG	Favorable
2.	Cellon	Cannon	CJ	
3.				
4.				
5.				
6.				

I. Summary:

This bill reclassifies the current misdemeanor offense of cruelty to animals to a third degree felony and the current third degree felony to a second degree felony. Additionally, it increases the criminal penalties for certain particularly malicious acts of animal cruelty or second or subsequent offenses.

This bill amends sections 828.12 and 921.0022 of the Florida Statutes.

II. Present Situation:

A person commits a misdemeanor of the first degree, punishable by up to one year incarceration or a fine of not more than $5,000 or both, if he unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter or unnecessarily mutilates, or kills an animal. s. 828.12(1). F.S. Deprivation of medical attention or sanitation are not currently specified elements of the crime.

A person commits a felony of the third degree, punishable by up to five years imprisonment or by a fine of not more than $10,000 or both, for an intentional act which results in the cruel death of an animal, or excessive or repeated infliction of unnecessary pain or suffering on an animal. s. 828.12(2), F.S.

The Legislature amended the felony provisions in 2002 to include a minimum mandatory fine of $2,500, and psychological counseling or an anger management treatment program where it is found that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal. s. 828.12(2)(a), F.S. Further, if a person commits a second

or subsequent felony offense of cruelty to animals, a minimum fine of $5,000 and six months in jail are required as part of the sentence. s. 828.12(2)(b), F.S.

III. Effect of Proposed Changes:

Senate Bill 2796 amends s. 828.12(1), F.S., by making a violation of that subsection a third degree felony offense. The third degree felony offense prohibited in s. 828.12(2), F.S., becomes a second degree felony under the provisions of the bill.

The minimum fine in s. 828.12(2)(a), F.S., is increased from $2,500 to $5,000 and the bill provides for a minimum six months jail time. A second or subsequent felony violation of s. 828.12(2), F.S., would result in a minimum 10 months jail time, an increase of 4 months under the provisions of the bill.

The bill amends s. 921.0022, F.S., to make corresponding changes to the offense severity ranking chart of the Criminal Punishment Code. Potential sentences for violations proscribed by the bill are not likely to result in a state prison sentence, assuming the offender has no prior criminal history and the violation is the only offense before the court for sentencing.

The bill increases the severity of one type of animal cruelty offense from a first degree misdemeanor to a third degree felony and increases the severity of another animal cruelty offense from a third degree felony to a second degree felony. The bill does not rank the third degree felony offense in the offense severity ranking chart of the Criminal Punishment Code. The lowest permissible sentence is any non-state prison sanction and the maximum is 5 years imprisonment for an unranked third degree felony.

The second degree felony offense is ranked by the bill in level four of the offense severity ranking chart of the Criminal Punishment Code and therefore the permissible sentence for this offense will range from any non-state prison sanction up to a fifteen year maximum sentence.

The act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals who are convicted of violating the cruelty to animals laws will pay increased fines.

C. Government Sector Impact:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections.

The Department's Bureau of Research and Data Analysis reports there were 58 admissions to community supervision and 18 admissions to prison for law violations which included felony animal cruelty during the fiscal year 2002-2003.

A term of incarceration of one year or less, is served in county jail. The provisions of the bill which create and increase mandatory minimum terms of incarceration, should result in offenders being sentenced to 6 or 10 months incarceration where they would have otherwise served less or no time in jail and therefore have some minimal impact on the county jail population.

VI. Technical Deficiencies:

Staff recommends an amendment that would modify the language in the bill (and current law) to be consistent with other current law related to sentences of incarceration. As mentioned above, sentences that result in a total of less than a year of incarceration are not served in the Department of Corrections. (*see* s. 944.17, F.S.)

The current language in s. 828.12(2)(b), F.S., has resulted in some confusion, pointed out by the Department of Corrections, in that "the person shall be released only upon expiration of sentence, shall not be eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence" is terminology that usually relates to a term of imprisonment in the state system. Some confusion has also resulted from the use of the term "serve a minimum mandatory period of incarceration of 6 months."

It seems the confusion lies in the interpretation of the intent of the 2002 amendment. If the Legislature intended for 100 percent of the 6 months to be served – whether it be in the Department of Corrections, where the inmate could be imprisoned as a result of some longer sentence on *another* felony, or in the county jail because it is his or her *only* sentence – then perhaps the confusion could be cleared up in such a manner as it would apply to either setting. For example: "shall be sentenced to a minimum mandatory term of incarceration of six months. Regardless of the sentence imposed, 100 percent of the incarceration must be served."

If the intent of the Legislature in the 2002 amendment was to allow for gain time, good time, early release, or any other method of calculating the actual incarceration served, it is not readily apparent from a plain reading of the current language by this analyst.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1418

SPONSOR: Agriculture Committee and Senators Aronberg and Campbell

SUBJECT: Cruelty to Animals/Bovines

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Poole	AG	Fav/CS
2.	Cellon	Cannon	CJ	
3.				
4.				
5.				
6.				

I. Summary:

This bill defines the term "bovine animal" and makes the exhibition "sport" known as "bulltailing" a felony of the third degree. Recognized rodeo and animal husbandry practices that are not otherwise prohibited by law are specifically exempt from the provisions of the bill. The bill also clarifies that simulated or bloodless bullfighting is a second degree misdemeanor. Although the misdemeanor offense has been in existence since 1971, it has never had a first or second degree designation.

This bill substantially amends section 828.121 of the Florida Statutes.

II. Present Situation:

It has been reported that a sport known as bulltailing is being conducted in Florida. From information gathered, the activity consists of two horse-mounted contestants chasing a bull up and down an oblong arena, competing to flip the animal over by using its tail. In the process of jerking the animal (through the accelerated speed of the horse) off its feet, the animal is often jarred to the point of disorientation, tails are broken, and sometimes even legs. The animal is prodded with a shocking device to force it to its feet, injuries notwithstanding, so that it can be forced to the ground repeatedly. The apparent object of the sport is to score points by felling the animal a certain number of times within a certain limited time period.

Purposely tripping or felling a horse by its legs is currently punished as a third degree felony in Florida. s. 828.12(4), F.S.

It is a misdemeanor of an undesignated degree to conduct a simulated or bloodless bullfight in Florida. *C.E. America, Inc. v. Antinori,* 210 So.2d 443 (Fla. 1968). The crime has existed since

1971, although it has never been specified as a first or second degree misdemeanor – the statute simply states that it is "punishable as a misdemeanor." s. 828.121, F.S.

III. Effect of Proposed Changes:

Section 1. Defines the term "bovine animal" to mean an animal of the subfamily bovine and includes, but is not limited to, a steer, calf, bull, ox, heifer, or cow.

It bans a person from intentionally dragging or felling by the tail a bovine animal in an organized sports exhibition and makes a violation a felony of the third degree.

The bill designates the misdemeanor violation of the prohibition against simulated or bloodless bullfighting exhibitions a misdemeanor of the second degree.

The bill specifically excludes rodeo and animal husbandry practices that are not otherwise prohibited by law.

Section 2. Provides that this act shall take effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1772

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Sexual Misconduct

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collins	Whiddon	CF	Fav/CS
2.	Harkey	Wilson	HC	Withdrawn
3.	Erickson	Cannon	CJ	
4.			JU	
5.				
6.				

I. Summary:

Committee Substitute (CS) for Senate Bill 1772 prohibits employees from engaging in sexual misconduct with certain clients who receive services from the Department of Children and Families (DCF or the department). The CS provides a definition for sexual misconduct and specifies that sexual misconduct is a second degree felony. A defendant is prohibited from using the consent of the individual as a defense to the charge of sexual misconduct. Sexual misconduct is added to the list of offenses that ban employment if identified as part of a Level 1and 2 screening.

Persons having knowledge of incidents of sexual misconduct are required to make a report to the abuse line. Knowingly or willfully either failing to report sexual misconduct or submitting an inaccurate, incomplete, or untruthful report is a first degree misdemeanor. A person who knowingly or willfully threatens or coerces another to alter testimony or a written report commits a third degree felony. The CS also prohibits the sealing or expunction of criminal history records relating to sexual misconduct.

This CS creates ss. 393.135, 394.4593, and 916.1075, F.S; amends ss. 400.215(2)(a)(b)(c) and (3), 943.0585, F.S., and reenacts numerous sections and parts of sections of the Florida Statutes (see bill for details).

II. Present Situation:

Concerns have been raised regarding some employees of the Department of Children and Families who engage in sexual misconduct with clients who are in the care of the department. Particular concerns have been expressed regarding the vulnerability of persons with developmental disabilities who live in residential facilities, developmental services institutions,

foster care facilities, group homes, intermediate care facilities, residential habilitation centers, and family care centers. There is also concern for persons with mental illness who may be temporarily residing at a receiving facility or living for longer periods of time at a treatment facility.

National statistics indicate that between 70 and 90 percent of these vulnerable individuals will be the victims of sexual abuse, assault, and/or exploitation at some point of their lives.[1] Many times this abuse comes from persons who are charged with providing care to these persons with disabilities. Because of functional limitations that are experienced by individuals with developmental disabilities or mental illness, they can be particularly vulnerable to these types of crimes.

Currently, s. 825.102, F.S., addresses the sexual abuse of elderly or disabled persons and specifies the penalties for these crimes. Depending upon the offense, the sexual abuse of an elderly or disabled person is a second or third degree felony. Current law also requires that certain persons who know or have a reasonable suspicion that a vulnerable adult is being abused immediately make a report to the abuse hotline (s. 415.1034, F.S.). If an investigation reveals that an incident occurred, subsequent actions include the notification of law enforcement and the state attorney's office. Further, s. 794.011, F.S., addresses the crime of sexual battery and specifies penalties for that crime if the victim is "mentally defective" and the offender has knowledge of that fact. These provisions have not been considered strong enough to put a stop to the sexual victimization of clients who are in the care of the department.

It has been difficult to prosecute offenders because, in many instances, the perpetrator argues that the victim provided consent. It has been suggested that strengthening the penalties associated with staff sexual misconduct would be a way to help ensure the safety of these vulnerable clients. Strengthening the penalties associated with sexual misconduct would also have an impact on employee screening and termination practices as well as criminal penalties.

Effect of Proposed Changes:

Committee Substitute for Senate Bill 1772 prohibits an employee[2] of the department or the Agency for Healthcare Administration from engaging in sexual misconduct with a client (who is in the custody of the department or living in certain facilities) and provides for mandatory reporting of sexual misconduct. The offense of sexual misconduct is a second degree felony, and the failure of a person having knowledge of such a crime to report it is a first degree misdemeanor. A defendant is prohibited from using the consent of the individual as a defense for the charge of sexual misconduct. The crime of sexual misconduct is also added to the list of offenses that prohibit employment if identified through Level 1 and 2 background screening. The CS forbids the sealing or the expunction of criminal records when the offense of sexual misconduct has been committed.

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[1] *Behind Locked Doors – Institutional Sexual Abuse*, Crossmaker, M., Sexuality and Disability, Vol. 9, No. 3, 1991.

[2] For the purposes of this legislation, the term "employee" includes any person under contract with the agency or the department and any paid staff member, volunteer, or intern of the agency or the department, or any person under contract with the agency or department or any person providing care or support to a client or patient on behalf of the department or its providers.

The CS creates ss. 393.135, 394.4593, and 916.1075, F.S., which prohibit sexual misconduct by employees with certain clients who receive services provided by the Developmental Disabilities and Mental Health programs within the department. These sections provide definitions for the terms "employee," "sexual activity," and "sexual misconduct." This CS defines "sexual activity" as:

- The oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object;
- Intentionally touching in a lewd or lascivious manner the breasts, genitals, the genital area, or buttocks, or the clothing covering them, or a person or forcing or enticing the person to touch the perpetrator;
- Intentionally masturbating in the presence of another person;
- Intentionally exposing the genitals in a lewd or lascivious manner in the presence of another person; or
- Intentionally committing any other sexual act that does not involve actual physical or sexual contact with the victim, including but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim.

The CS specifies that an employee who engages in sexual misconduct with a client or a patient as specified commits a second degree felony. The CS further provides that an employee may be found guilty of unlawful sexual misconduct without having committed the crime of sexual battery. For the purposes of this CS, the term "client" refers to persons in the custody of the department who reside in certain facilities or receive services from a family care program. The term "patient" refers to persons committed to the custody of the department or who are temporarily residing in a receiving facility defined in s. 394.455(26), F.S., or a treatment facility defined in s. 394.455(30), F.S.

The consent of the client or patient to sexual activity does not prohibit prosecution in accordance with the CS. Exemptions from criminal liability include the employee's legal marriage to the client or instances in which the employee had no reason to believe that the individual was a client receiving services in accordance with the specifications of the CS.

The CS requires that an employee who witnesses sexual misconduct or otherwise knows or has reasonable cause to suspect a person has engaged in sexual misconduct to immediately report the incident to the department's central abuse hotline and to law enforcement. The employee must then prepare, sign and date a report that specifically describes the nature of the misconduct including the time and location the incident occurred and the persons involved in the incident. The written report is to be delivered to the employee's supervisor or program director who then must provide copies to the department's inspector general. The inspector general is required to immediately conduct an administrative investigation and notify the state attorney if there is reasonable cause to believe the incident occurred.

An employee who knowingly or willfully fails to report sexual misconduct, or prevents another person from doing so, or submits an inaccurate, incomplete, or untruthful report, commits a first degree misdemeanor. Further, a person who threatens or coerces another person to alter testimony or a written report commits a third degree felony.

Currently, there are procedures for abuse reporting of incidents relating to sexual abuse of clients in the care of the department (ch. 415, F.S.). It is unclear how employees will make a determination to report a violation based on "reasonable cause." It is also questionable whether these same employees will actually make a report to law enforcement if they have not personally observed the incident.

The CS further specifies that, notwithstanding prosecution, any unlawful sexual misconduct, as determined by the Public Employees Relations Commission, constitutes sufficient cause under s. 110.227 F.S., for dismissal from employment and that the person may not be employed again in any capacity working in the developmental disabilities or mental health service systems. However, the CS does not specify whether these sanctions apply to employees who engage in sexual misconduct who do not make an appeal to the Public Employees Relations Commission. Further, the CS does not specify how employers are to obtain information relating to an employee's dismissal for reasons of sexual misconduct.

The CS amends ss. 435.03 and 435.04, F.S., pertaining to employee background screening requirements, to include sexual misconduct as an offense banning employment. (Based upon the requirement of ch. 916, F.S., it appears that background screening is only required for institutional security personnel; there is no specified screening for other employees.)

The CS amends s. 943.0585, F.S., to prohibit the court-ordered expunction of criminal history records relating to the sexual misconduct of an employee as specified by ss. 393.135, 394.4593, or 916.1075, F.S., without regard to whether adjudication was withheld or the defendant was found guilty or plead nolo contendere to the offense or whether the defendant committed this crime as a minor and was found guilty or plead nolo contendere to the crime. Similar changes are made to s. 943.059, F.S., to prohibit the court-ordered sealing of criminal history records relating to the sexual misconduct of an employee as specified by ss. 393.135, 394.4593, or 916.1075, F.S.

The CS reenacts numerous sections and parts of sections of the Florida Statutes (see bill for details) for the purpose of incorporating the amendments of sections amended by the CS in reference thereto (see bill for details).

This act takes effect July 1, 2004.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Agency for Health Care Administration reports that 4 additional staff positions will be needed to perform the background screening and review that are required by this committee substitute. An expense of $218,574 is projected for these positions for the first year.

The CS may result in an undetermined increase in administrative procedures relating to employee appeals as allowed for under s. 110.227, F.S., and an undetermined increase in court hearings relating to the crime of sexual misconduct.

Staff training will need to be developed and delivered for employees working in areas affected by the CS.

The criminal offense and penalty provisions of the CS were not reviewed by the Criminal Justice Impact Conference at the time this analysis was completed.

V. Technical Deficiencies:

None.

VI. Related Issues:

The sexual misconduct provisions of the CS may increase reporting to the central abuse hotline. In addition, current law already provides for the prosecution of offenses related to sexual battery. Further, current employee regulations prohibit sexual activity with clients of the department and require dismissal for infractions. Finally, certain professional and licensing standards prohibit sexual activities with clients. Infractions can result in the license being revoked and possible civil penalties.

VII. Amendments:

None.

Bill No. CS for SB 1772

Amendment No. 1 641936

CHAMBER ACTION

Senate House

CRIMINAL JUSTICE

DATE: 4/16/04

TIME: 4:30 p.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

On page 11, lines 1 through 6, and

On page 13, line 27, through page 14, line 2, and

On page 16, lines 18 through 23, delete those lines

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 12 through 18, delete those lines

and insert:

requiring certain employees to report

Bill No. CS for SB 1772

Amendment No. 2 875506

CHAMBER ACTION

Senate House

CRIMINAL JUSTICE

DATE: 4/16/04

TIME: 4:30 p.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

On page 12, between lines 7 and 8, and

On page 15, between lines 2 and 3, and

On page 17, between lines 22 and 23

insert:

(8) The provisions and penalties set forth in this section are in addition to any other civil, administrative, or criminal action provided by law that may be applied against an employee.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 30, after "penalties;"

insert:

Specifying that these provisions and penalties are in addition to any other actions provided

for by law;

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1820

SPONSOR: Home Defense, Public Security, and Ports Committee

SUBJECT: Seaport Security Standards

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dodson	Skelton	HP	Fav/CS
2.	Erickson	Cannon	CJ	
3.				
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 1820 amends s. 311.12, F.S., to require the Legislature to review any seaport that is not in substantial compliance with the statewide minimum security standards by November 2005, as reported by the Florida Department of Law Enforcement (FDLE).

The CS also requires the Legislature to review, by December 31, 2004, the ongoing costs of operational security on seaports to consider: the impacts of minimum security standards mandated under s. 311.12, F.S., on those costs, mitigating factors that may reduce costs without reducing security, and methods by which seaports may implement operational security using a combination of sworn law enforcement officers and private security services.

The CS also provides that, subject to the provisions of ch. 311, F.S., and appropriations made for seaport security, state funds may not be expended for operational security costs without certification of need for such expenditures by the Office of Ports Administrator within FDLE.

The provisions of the CS are being proposed as a result of an interim study on seaport security conducted by the Home Defense, Public Security, and Ports Committee.

This CS amends s. 311.12, F.S.

II. Present Situation:

Florida has fourteen public, commercial seaports, as defined in s. 311.09, F.S. The seaports are designated for purposes of participating as members of the Florida Seaport Transportation Economic Development (FSTED) Council. The purpose of the FSTED Council is to review and

evaluate construction and infrastructure projects to "improve the movement and intermodal transportation of cargo or passengers in commerce and trade..."[1] through state funding provided by the Legislature. The Council's recommendations are given to the State Department of Transportation for inclusion in its legislative budget request, pursuant to s. 311.09(10), F.S. The fourteen public, commercial seaports are: Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina.

Pursuant to s. 311.12(1)(b), F.S., the ports of Fort Pierce and Port St. Joe are currently in "inactive" status for purposes of compliance with state seaport security standards. This status is determined by periodic checks by FDLE to determine if there is any maritime activity at the seaport. If such activity is occurring, the status will be changed to "active" for compliance purposes.

In 2000, Florida adopted statewide minimum standards for each of the seaports identified in s. 311.09, F.S. These standards are set forth in the "Port Security Standards and Compliance Plan" adopted in December 2000.

Originally, the statewide minimum standards law was intended to slow the traffic of illegal drugs and cargo through Florida's publicly funded seaports. All seaports were required to produce a seaport security plan, which was accepted as complete based on required criteria by the FDLE and the Office of Drug Control. Annual, unannounced inspections of each seaport to assure compliance with an approved security plan, as required by law, began in 2001. Law enforcement inspections were done, as scheduled, and seaports were provided with information based on those inspections that would help make port facilities more secure. Focus areas included improved perimeter security through fencing, gating, CCTV surveillance and law enforcement patrols; and improved lighting and better access control for restricted areas on each seaport.

Immediately following the attacks on America in September 2001, Governor Bush ordered an assessment of all critical infrastructures in the state. Seaports were considered high-risk targets due to the vital role intermodal transportation plays in our economy.

Senate Interim Study. During the 2003-2004 interim, the Committee on Home Defense, Public Security, and Ports conducted a study, which reviewed the security of Florida's seaports. *See* Seaport Security (December 2003), Report Number 2004-150, Senate Committee on Home Defense, Public Security, and Ports. The Senate interim study found that four Florida seaports are currently in substantial compliance with state seaport standards. Most other ports are close to being in compliance pending completion of infrastructure and or technology improvements depending on grants funding. While the FDLE is given responsibility for performing annual seaport security inspections, no state agency has authority to sanction a seaport for failure to comply with the law. The FDLE is required to make the results of its annual inspections available to the Legislature. Each seaport's degree of substantial compliance may be taken into consideration by the Legislature in making security project or other funding decisions pursuant to s. 311.12(4)(e), F.S. While the majority of Florida's seaports have made good-faith efforts to comply with the minimum security standards, only the Legislature may address the issue of non-

[1] Section 311.07(1), F.S.

compliance, as no recourse is provided to law enforcement to address those ports found in regular and continuous non-compliance.

Funding. In the year following the September attacks in 2001, the FSTED Council redirected almost $8 million of infrastructure economic development funding towards operational costs on the member seaports. These funds were spent to increase law enforcement presence on the ports. Since 2001, FSTED estimates that Florida ports have spent approximately $57.3 million in state funds for physical and operational security. From FSTED economic development funds authorized in ch. 311, F.S., $2.3 million was spent to pay for National Guard presence in cruise terminals and $17.8 million was spent to pay for costs associated with increased law enforcement presence on the seaports. In addition, $37.2 million was diverted from capital improvement projects to increase perimeter and premises protection. Florida seaports have worked with the FDLE and the Office of Drug Control to secure federal ports security funding. From 2001 to date, the federal government has awarded $262 million in two rounds of seaport security grants and $75 million in high-risk, high-threat critical infrastructure security grants.

Of those Round One and Round Two awards, Florida seaports have received $34,102,526 in port security grants and $6,280,423 in High-Risk, High-Threat Critical Infrastructure security grants.[2] Round Three awards, issued in December 2003, reflected $7,508,747 in funding for projects on public seaports and at private terminals in Florida. The focus of the grant awards appeared to be on making improvements at a large number of fuel terminals across the nation to bring them to a minimum level of security. This focus was different than the earlier rounds and actual overall dollar amounts were reduced for Florida, but quite a large number of facilities received funding for public seaports and at private fuel terminals along the coastlines. Grant awards for each round of funding have been based on the prioritized lists of security projects agreed to by the FSTED Council, the FDLE, and the Office of Drug Control. Those prioritized lists have then been reviewed by the U.S. Department of Transportation Maritime Administration (MARAD), the United States Coast Guard (USCG), and the U.S. Department of Homeland Security Transportation Security Administration (TSA) for final award designation.

Currently, there is one federal award cycle outstanding. Round Four funding comes as part of the federal fiscal year 2004-2005 Department of Homeland Security Budget approved on October 1, 2003. Available Round Four funding will be $125 million. Application guidelines have not yet been published for Round Four.

III. Effect of Proposed Changes:

For purposes of making security project or other funding decisions concerning public seaports, under current law, the Legislature may consider a seaport's degree of substantial compliance with the statewide minimum security standards established in s. 311.12, F.S. The degree of compliance with security standards is determined by the FDLE through seaport security inspections and is reported annually to the Legislature.

[2] Under the Wartime Supplemental Appropriations Act of 2003, the Department of Homeland Security Office of Domestic Preparedness awarded High-Risk, High-Threat Critical Infrastructure grants to seaports and private facilities on seaports. This total reflects all funds received by Florida entities through this grant award.

This CS amends s. 311.12(4)(e), F.S., to require the Legislature to review any seaport that is not in substantial compliance with the statewide minimum security standards by November 2005, as reported by the Florida Department of Law Enforcement (FDLE).

The CS also requires the Legislature to review, by December 31, 2004, the ongoing costs of operational security on seaports to consider: the impacts of minimum security standards mandated under s. 311.12, F.S., on those costs, mitigating factors that may reduce costs without reducing security, and methods by which seaports may implement operational security using a combination of sworn law enforcement officers and private security services.

The CS also provides that, subject to the provisions of ch. 311, F.S. (i.e., the Florida Seaport Transportation and Economic Development Program), and appropriations made for seaport security, state funds may not be expended for operational security costs without certification of need for such expenditures by the Office of Ports Administrator within FDLE.

The CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. CS for SB 1820

Amendment No. 1 920900

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 11:55 a.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 16,

insert:

Section 1. Subsection (2) of section 311.07, Florida Statutes, is amended to read:

311.07 Florida seaport transportation and economic development funding.--

(2) A minimum of $20 million ~~$8 million~~ per year shall be made available from the State Transportation Trust Fund to fund the Florida Seaport Transportation and Economic Development Program.

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 2, after the semicolon

insert:

amending s. 311.07, F.S.; providing for a minimum of $20 million per year from the State Transportation Trust Fund to the Florida Seaport Transportation and Economic Development Program;

Bill No. CS for SB 1820

Amendment No. 2 555014

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/16/04

TIME: 11:40 a.m.

Senator Smith moved the following amendment:

Senate Amendment

On page 1, line 17, after the word "amended"

insert: and a new subsection (7) is added to that section

Bill No. CS for SB 1820

Amendment No. 3 904200

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/16/04

TIME: 9:30 a.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

On page 3, between lines 22 and 23,

insert:

(7) The seaport security director for each seaport identified in s. 311.09 or any agent or employee thereof designated by the seaport security director to maintain order and provide security within the seaport, who has probable cause to believe that a person is trespassing in a designated restricted access area of a seaport may take such person into custody and detain him or her in a reasonable manner for a reasonable length of time pending the arrival of a law enforcement officer. Such taking into custody and detention by an authorized person does not render that person criminally or civilly liable for false arrest, false imprisonment, or unlawful detention. If a trespasser is taken into custody, a law enforcement officer shall be called to the scene immediately after the person is taken into custody.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 11, after the semicolon

insert:

specifying circumstances under which seaport security directors or designees may take a person into custody; providing an exemption from liability for false arrest for custody and detention by authorized persons;

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2160

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Peaden

SUBJECT: Controlled Substances

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Fav/CS
2.	Erickson	Cannon	CJ	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2160 deletes anhydrous ammonia and benzyl chloride from the definition of "listed precursor chemical" and adds benzaldehyde, hydriodic acid, and nitroethane to that list as chemicals that may be used in manufacturing a controlled substance in violation of ch. 893, F.S. Anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine are added to the listed essential chemicals that may be used as a solvent, reagent, or catalyst to manufacture controlled substances in violation of ch. 893, F.S. These changes to the listed chemicals under ch. 893, F.S., conform to federal requirements for precursor or essential chemicals used to manufacture controlled substances.

The CS specifies that, except as authorized under ch. 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

If a person manufactures methamphetamine or phencyclidine or possesses any listed chemical with an intent to manufacture methamphetamine or phencyclidine and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, that person who does commits a first degree felony and must be sentenced to a minimum mandatory term of imprisonment of 5 calendar years. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great

bodily harm, the defendant commits a first degree felony and must be sentenced to a minimum mandatory term of imprisonment of 10 calendar years.

The CS makes it unlawful to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia; or that is not constructed in accordance with sound engineering, agricultural, or commercial practices.

The possession of 14 grams or more of pseudoephedrine (such as Sudafed®) in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine is a first degree felony, which is subject to the enhanced felony penalties of the drug trafficking provisions under ch. 893, F.S.

The CS provides that criminal violations relating to unlawful possession of listed chemicals under s. 893.149, F.S., do not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances pursuant to the provisions of ch. 893, F.S.

Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

This CS amends ss. 893.033, 893.13, 893.135, and 893.149, F.S., and reenacts s. 921.0022, F.S.

II. Present Situation:

Controlled Substances

Chapter 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act, classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Methamphetamine is a Schedule II controlled substance under Florida law (s. 893.03(2)(c)4., F.S.) and federal law (21 U.S.C. § 812). Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called "speed," "crank," "crystal," or "zip," methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial "high," lasting between 15 and 30 minutes, that is difficult if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges. Methamphetamine's psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health. In the United States, methamphetamine is either imported by drug traffickers or manufactured in small "clandestine" laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement website, Florida ranked sixth nationwide last year for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapid spread of clandestine labs in Florida is reflected in the DEA statistics that, prior to 1999, only seven labs had been seized in Florida.

Anhydrous ammonia and ephedrine are listed as precursor chemicals under Florida law. It is unlawful under federal law to steal anhydrous ammonia or transport stolen anhydrous ammonia across state lines, if the person committing the theft or transport knows, intends, or has reasonable cause to believe that the anhydrous ammonia will be used to manufacture a controlled substance. 21 U.S.C. § 864.

Section 893.033(1), F.S., defines "listed precursor chemical" as a chemical that may be used in manufacturing a controlled substance in violation of ch. 893, F.S., and is critical to the creation of the controlled substance. Section 893.033(2), F.S., defines "listed essential chemical" as a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of ch. 893, F.S.

Anhydrous ammonia is a necessary component to the "reactant metal" method or "Nazi" method of methamphetamine production. Currently, there are 26 chemicals or substances listed or designated in s. 893.033(1), F.S., as listed precursor chemicals, some of which are used or found in the manufacture of methamphetamines, such as ephedrine, pseudoephedrine, benzyl chloride, benzyl cyanide, chloroephedrine, chloropseudoephedrine, methylamine, and phenylacetic acid. There are scores of chemicals used in the production of methamphetamine; their appearance depends upon the production method used. Some listed precursor chemicals have legitimate uses. For example, methylamine is used in tanning and the manufacture of dyestuffs; benzyl chloride is used in the manufacture of perfumes, pharmaceuticals, dyes, tannins, and artificial resins; ephedrine is used as an anti-asthmatic drug; pseudoephedrine is used as a decongestant.

The listing or designation of a chemical or substance as a listed precursor chemical in s. 893.033, F.S., does not bar, prohibit, or punish legitimate use of the chemical or substance. However, s. 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or

distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

Some states punish unlawful transportation of anhydrous ammonia.[1] Some states punish tampering with equipment or a facility used to contain, store, or transport anhydrous ammonia.[2] The transportation of compressed gases is regulated by the federal government.[3]

Section 893.135, F.S., provides enhanced criminal penalties for drug trafficking. A person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine or methamphetamine or of any mixture containing amphetamine or methamphetamine, phenylacetone, phenylacetic acid, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a first degree felony. The section provides enhanced penalties for larger amounts of unlawful drugs specified in the section and involved in drug trafficking. If the amount of the unlawful drug specified in the section is 14 grams or more but less than 28 grams, the person must be sentenced to a minimum mandatory term of imprisonment of 3 years and pay a fine of $50,000. If the amount of the unlawful drug specified in the section is 28 grams or more, but less than 200 grams, the person must be sentenced to a minimum mandatory term of imprisonment of 7 years and pay a fine of $100,000. If the amount of the unlawful drug specified in the section is 200 grams or more, the person must be sentenced to a minimum mandatory term of imprisonment of 15 years and ordered to pay a fine of $250,000. A defendant commits a capital felony if he or she knowingly manufactures or brings into Florida 400 grams or more of an unlawful drug specified in the section and knows that the probable result of such manufacture or importation would be the death of any person. Any person sentenced for a capital felony must pay $250,000.

Regulation of Over-the-Counter Ephedrine in Florida

During the 1994 Session, the Legislature adopted legislation which made ephedrine, the active ingredient of ephedra, a prescription drug.[4] This means that any product which contains ephedrine can only be dispensed by prescription. This legislation was enacted in reaction to the marketing of, and the growing popularity of, products that were advertised to help the user of the products to stay awake, lose weight, or enhance athletic performance. The use of ephedrine for these purposes has not been approved by the FDA. There was growing concern that the marketing of these products was misleading consumers and was encouraging abuse of ephedrine among teenaged youth. In 1995, the law was amended to authorize certain drug products such as Primatene tablets to control asthma and combinations of products containing ephedrine in

[1] See e.g., Hawaii Rev. Stat. § 329-65; Ind. Code § 22-11-20-6; Iowa Code § 124.410F; Minn. Stat. § 18C.201; Neb. Rev. Stat. § 28-1240; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.001; Wash. Rev. Code § 69.55.020; Wis. Stat. § 101.10.

[2] See e.g., Iowa Code § 124.401F; Ky. Rev. Stat. § 250.4892; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tex. Code Ann. § 504.002; Wis. Stat. § 101.10. Some states punish unlawful sale, delivery (or transfer) of anhydrous ammonia. See e.g., Hawaii Rev. Stat. § 329-65; Iowa Code § 124.401F; Kan. Stat. Ann. § 65-7006; Minn. Stat. § 18C.201; S.D. Codified Laws Ann. § 38-19-36.5; Tenn. Code Ann. § 39-17-433; Tex. Code Ann. § 504.002; Wash. Rev. Code § 69-55.020; Wis. Stat. § 101.10.

[3] See The Transportation of Explosives Act. The Act is administered by the Interstate Commerce Commission for railway and highway transport.

[4] See ch. 94-309, L.O.F., which created s. 499.033, F.S.

specified dosage forms to be sold over the counter. Such drug products were thought to have little potential for abuse. The 1995 revisions also made it a violation of the Florida Drug and Cosmetic Act, ch. 499, F.S., for any person to advertise or label any product containing ephedrine for the indication of stimulation, mental alertness, weight loss, appetite control, energy, or any other indication not approved by the FDA.[5] Pseudoephedrine (Sudafed®) does not require a prescription. Pseudoephedrine decongests by causing blood vessels to narrow, thereby preventing fluid from leaving the vessels and causing the tissues to swell.

Florida Drug and Cosmetic Act

The Department of Health (DOH) is responsible for regulating and enforcing the Florida Drug and Cosmetic Act, ch. 499, F.S. Chapter 499, F.S., provides regulatory oversight of the manufacture and distribution of drugs, devices, cosmetics and ether within Florida. DOH does not regulate dietary supplements, but has authority to take regulatory action if drugs are misbranded or adulterated.

Section 499.003, F.S., defines "contraband legend drug" as any adulterated drug, any counterfeit drug, and also as any legend drug for which a pedigree paper does not exist, or for which the pedigree paper in existence has been forged, counterfeited, falsely created, or contains any altered, false, or misrepresented matter. Under s. 499.006(10), F.S., a drug is an adulterated drug if it is a legend drug that has been purchased, held, sold or distributed at any time by a person not authorized under federal or state law to do so.

Chapter 499, F.S., provides criminal penalties for violations of the act relating to unlawful sale, purchase, receipt, possession, or delivery of prescription or contraband drugs. Any person who purchases or sells prescription drugs for wholesale distribution in exchange for currency commits a third degree felony.[6] A person who knowingly purchases or receives from a person not authorized to distribute legend drugs under ch. 499, F.S., a legend drug in a wholesale transaction commits a second degree felony.[7] A person who knowingly sells or transfers to a person not authorized to purchase or possess a legend drug in a wholesale distribution transaction commits a second degree felony.[8] A person who is knowingly in actual possession of any amount of contraband legend drugs, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of contraband legend drugs, commits a second degree felony.

III. Effect of Proposed Changes:

Section 1. Amends s. 893.033, F.S., relating to listed chemicals, to delete anhydrous ammonia and benzyl chloride from the definition of "listed precursor chemical" and to add benzaldehyde, hydriodic acid, and nitroethane to that list as chemicals that may be used in manufacturing a controlled substance in violation of ch. 893, F.S.

The section adds anhydrous ammonia, benzyl chloride, hydrochloric gas, and iodine to the listed essential chemicals that may be used as a solvent, reagent, or catalyst to manufacture controlled

[5] See s. 2, chapter 95-415, L.O.F., which added s. 499.0054(6), F.S.
[6] See s. 499.0691(2)(i), F.S.
[7] See s. 499.0051(4), F.S.
[8] See s. 499.051(5), F.S.

substances in violation of ch. 893, F.S. According to the Florida Department of Law Enforcement (FDLE), these changes conform to federal requirements for precursor or essential chemicals, as applicable, which are used to manufacture controlled substances.[9]

Section 2. Amends s. 893.13, F.S., to provide that, except as authorized under ch. 893, F.S., it is unlawful for any person to manufacture methamphetamine or phencyclidine, or possess any listed chemical as defined in s. 893.033, F.S., in violation of s. 893.149, F.S., and with intent to manufacture, methamphetamine or phencyclidine. Section 893.149, F.S., provides that it is a second degree felony for a person to possess a listed chemical with the intent to unlawfully manufacture a controlled substance, or possess or distribute a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to unlawfully manufacture a controlled substance.

If any person manufactures methamphetamine or phencyclidine or possesses any listed chemical with an intent to manufacture methamphetamine or phencyclidine and the commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16 years of age is present, the person commits a first degree felony and must be sentenced to a minimum mandatory term of imprisonment of 5 calendar years. If, during the commission of the crime, the defendant causes a child under the age of 16 years to suffer great bodily harm, the defendant commits a first degree felony and must be sentenced to a minimum mandatory term of imprisonment of 10 calendar years.

The section makes it unlawful to store anhydrous ammonia in a container that is not approved by the U.S. Department of Transportation to hold anhydrous ammonia; or that is not constructed in accordance with sound engineering, agricultural, or commercial practices. Any person who violates this provision by unlawfully storing anhydrous ammonia commits a third degree felony.

If a person violates any provision of ch. 893, F.S., and such violation results in a serious injury to a state, local, or federal law enforcement officer, the person commits a third degree felony. If the injury sustained by the law enforcement officer results in death or great bodily harm, the person commits a second degree felony.

Section 3. Amends s. 893.135, F.S., to provide that a person who knowingly sells, purchases, manufactures, delivers, or brings into Florida, or who is knowingly in actual or constructive possession of, 14 grams or more of pseudoephedrine in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine commits a first degree felony. The section provides enhanced penalties for larger amounts of unlawful drugs involved in drug trafficking. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture or amphetamine or methamphetamine is 14 grams or more but less than 28 grams the person must be sentenced to a minimum mandatory term of imprisonment of 3 years and pay a fine of $50,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture of

[9] See the federal "List I Chemicals" cited at 21 U.S.C. 802(34) which generally correspond to "precursor chemicals" under Florida law cited at s. 893.033(1), F.S. List I chemical means a chemical specified by regulation of the U.S. Attorney General as a chemical that is used in manufacturing a controlled substance in violation of federal drug abuse prevention and control laws and is important to the manufacture of the controlled substances. Also see federal "List II Chemicals" cited at 21 U.S.C. 802(35) which generally correspond to "essential chemicals" under Florida law cited at s. 893.033(2), F.S.

amphetamine or methamphetamine is 28 grams or more, but less than 200 grams, the person must be sentenced to a minimum mandatory term of imprisonment of 7 years and pay a fine of $100,000. If the amount of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine is 200 grams or more, the person must be sentenced to a minimum mandatory term of imprisonment of 15 years and pay a fine of $250,000.

A defendant commits a capital felony if he or she knowingly manufactures or brings into Florida 400 grams or more of pseudoephedrine which is used in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine and knows that the probable result of such manufacture or importation would be the death of any person. Any person sentenced for a capital felony must pay $250,000.

Section 4. Amends s. 893.149, F.S., relating to the unlawful possession of a listed chemical, to provide that this section does not apply to a public employee or private contractor authorized to clean up or dispose of hazardous waste or toxic substances pursuant to the provisions of ch. 893, F.S. Any damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical, as defined in s. 893.033, F.S., must be the sole responsibility of the person or persons unlawfully possessing, storing, or tampering with the listed chemical. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with a listed chemical extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the listed chemical, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor, or seller which constitute negligent misconduct or failure to abide by the laws regarding the possession or storage of a listed chemical.

Section 5. Reenacts s. 921.0022, F.S., relating to the offense severity ranking chart, for purposes of incorporating the amendments to s. 893.135, F.S., in this CS

Section 6. Provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimates that the prison bed impact is indeterminate with minimal impact expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2408

SPONSOR: Senator Webster

SUBJECT: Talent Agencies and Advance Fee Services

DATE: April 16, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	Cellon	Cannon	CJ	
3.			JU	
4.			FT	
5.			AGG	
6.			AP	

I. Summary:

This bill provides as follows:

- Abolishes the regulation of talent agencies by Department of Business and Professional Regulation (department).
- Provides definitions and requirements for advance fee talent services.
- Narrows the number of prohibited or unlawful acts by talent agencies.
- Deletes the authority of the department to revoke or suspend the licenses of talent agents.
- Deletes the authority of the department to make rules.
- Deletes the requirement that a talent agency file a maximum fee schedule with the department.
- Deletes the requirement for filing the required bond with the department while increasing the bond from $5,000 to $10,000.
- Establishes requirements for talent agency contracts.
- Authorizes state attorneys to seek an injunction to enforce the provision of part VII of ch. 468, F.S., relating to talent agencies.
- Authorizes civil actions by persons harmed by a violation of a prohibited act.
- Authorizes the department to continue to prosecute pending legal proceedings.

The bill also increases the number of acts related to services provided by a talent agency that would constitute a third degree felony or a second degree misdemeanor.

This bill would take effect on July 1, 2004.

This bill substantially amends the following sections of the Florida Statutes: 468.401, 468.402, 468.406, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, and 468.415.

This bill creates sections 468.416 and 468.417, Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 468.403, 468.404, 468.405, 468.407, and 468.414.

This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Talent agencies are defined in s. 468.401, F.S., to mean any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist. Section 468.403, F.S., requires a talent agency license for any person who, for compensation, engages in the occupation or business of procuring or attempting to procure engagements for an artist. The department regulates through the talent agency licensing program, which does not have a board, does not require an exam, and does not require pre-licensure education, or continuing education. The statutory provisions relating to the regulation of talent agents and agencies are in part VII of ch. 468, F.S.

Licensees are required to have a $5,000 surety bond.[1] The department has the authority to revoke a license and can impose citations and fines.[2] However, the department has no authority over criminal violations, e.g., theft. According to the department, criminal violations are referred to the State Attorney's Office.

According to the department, the laws governing talent agency regulation contain unclear provisions. For example:

- the definition of a talent agency does not include production companies, which are the companies that actually produce films;
- the statutes or rules do not prevent a talent agency that has lost its license from reopening under another name; and
- the requirement in s. 468.405(1), F.S., for "good moral character" as a qualification for licensure is vague.

Advance Fee Talent Services

According to the department, advance-fee talent services are performed by entities that receive money from prospective artists to promote or advertise the artist. The advance-fee talent services do not attempt to procure engagements for the artists. However, many artists do not understand this distinction and believe that the persons providing advance-fee talent services do procure engagements. The department does not have regulatory jurisdiction over advance-fee talent service operations.

[1] Section 468.408, F.S.
[2] *See* ss. 455.224, 468.402, and 468, F.S., and ch. 61-19, F.A.C.

Fiscal Soundness of the Talent Agencies Program

The Auditor General reviewed the department's Professional Regulation Trust Fund in an operational audit. The report dated October 2001, noted that the department's regulation of talent agencies had experienced fiscal year-end deficits for the previous three years, and concluded that it was unlikely that the profession's 291 licensees would be able to eliminate the existing cash deficit and then continue to pay license fees in an amount sufficient to pay ongoing regulatory costs.[3]

Section 468.404(1)(b), F.S., requires that the department assess, for the 2003-2004 fiscal year only, talent agency license fees at a level sufficient to cover the cost of regulation appropriated in the 2003-2004 General Appropriations Act, or any other act passed by the 2003 Legislature containing appropriations for such purpose. This provision expires July 1, 2004.

According to the department, the talent agencies program has a current deficit cash balance. The department advises the talent agency licensee base is small and has approximately 322 current active licensees. According to the department, a fee of at least $1,000 per licensee would be required just to bring the profession out of the deficit. Additionally, the renewal fee of $400 for talent agencies has reached its statutory cap.[4]

III. Effect of Proposed Changes:

Section 1. The bill creates s. 468.401, F.S., to provide for the regulation of advance-fee talent services. An advance-fee is defined by the bill to mean a fee paid by an artist before the artist receives actual earnings as an artist or where the actual earnings received by the artist exceed the fee charged. Subsection (2) of s. 468.401, F.S., defines advance-fee services to include the promotion of the artist, managing or developing the artist's career, and career counseling.

The bill also defines the terms "agency" and "owner" to include a talent agency or an advance-fee service. The term "talent agency" is amended to include any business entity in addition to the reference to any person in current law. The bill also defines the term "divided fee" to mean the process by which, without written approval from the artist, two or more persons receive a fee from the artist for placing the artist and the fee paid to the agents exceeds the compensation that would have been received by only one agent acting on behalf of the artist.

The bill defines the term "manager" as a person that advises, guides, or directs the artist in career development, but is not primarily involved in placing the artist in employment. The bill defines the term "modeling or photographing a minor in the nude in the absence of written permission from the minor's parents or legal guardian." This definition requires the written consent of both parents, if living, or legal guardian, and that the parents or legal guardian must be fully advised.

Section 2. The bill amends s. 468.402, F.S., to delete several prohibited acts that would subject a talent agent to discipline. The following currently prohibited acts would be deleted:

[3] Auditor General, *Professional Regulation Trust Fund, Florida Department of Business and Professional Regulation Operational Audit*, Report No. 02-059, October 2001.
[4] *See* s. 468.404(1), F.S.

- obtaining or attempting to obtain a license by fraud, misrepresentation or concealment;
- having been found guilty, or having entered a plea of no contest, to a crime involving moral turpitude or dishonest dealings;
- having a previous talent agency license revoked or denied;
- having operated with a revoked, suspended, inactive, or delinquent license;
- having aided or assisted a person to operate without a license;
- having failed to perform a legal obligation of a talent agency; and
- having acted beyond the scope permitted by law or performed professional responsibilities beyond the person's competency.

The bill further amends s. 468.402, F.S., to delete the department's authority to revoke or suspend a license, and to make rules to implement part VII of ch. 468, F.S., relating to talent agencies.

Section 3. The bill amends s. 468.406, F.S., to require each talent agency to post an itemized schedule of maximum fees, charges, and commissions it intends to charge. The provision deletes the requirements under current law for filing the fee schedule with the department with the license application and thereafter with any increase in the scheduled fees.

Section 4. The bill amends s. 468.408, F.S., to increase the bond requirement for each agency from $5,000 to $10,000. It also deletes the requirement to file the bond with the department. The bill also requires that, before the execution of a contract with an artist, the agency must provide the artist with a copy of the bond.

Section 5. The bill amends s. 468.409, F.S., to require agencies to keep a fully executed copy of the contract of each artist. Current law only requires that they keep a copy of the contract. The bill also requires that agencies keep a file of all attempts to promote or advertise the artist. The bill changes from one year to five years the period that the agency must keep its file or card for each artist.

Section 6. The bill amends s. 468.410, F.S., to require an executed contract between an agency and an artist when these parties agree that the agency will secure employment for the artist. If the circumstances do not permit a contract before the first employment, the contract must be executed within seven days of the first employment. The contract may also contain a list of commissions in lieu of the list of fees required under current law.

The bill also prohibits talent agencies from requiring subscription to a website as a condition for registering or obtaining employment for an artist. The bill also requires that the agency give the artist a copy of each of the following:

- part VII of ch. 468, F.S.;
- the signed and authenticated contract, which must be provided at the time the contract is executed; and
- a criminal background check of each owner and operator of the agency.

The bill provides that a contract that does not conform to the requirements of part VII of ch. 468, F.S., is voidable by the artist. If the contract is voided by the artist, the artist would not be required to pay any consideration or return any compensation received from the agency. The bill also provides artists with the right to cancel a contract within 14 days after a contract is signed. An artist may not waive this cancellation right, and any attempt by the agency to have the artist waive this right would constitute a violation of part VII of ch. 468, F.S. The bill also provides that an artist that cancels a contract can not be required to return or pay any consideration received from the agency.

Section 7. The bill conforms s. 468.411, F.S., to current bill drafting conventions and corrects the catch line.

Section 8. The bill amends s. 468.412, F.S., to change from one to five years the period of time that an agency must keep a record sheet for each booking (placement) of an artist. The bill also requires that the agency keep a record of the amount of commission received from the artist in lieu of the record of the amount of fees required under current law. The bill authorizes inspection of agency records by any state attorney or authorized agent of the state attorney, while it deletes the department's authority to inspect these records.

The bill deletes the requirement for each talent agency to conspicuously post the agency's name and address, a copy of part VII of ch. 468, F.S., and the rules adopted under its authority. Also deleted by the bill is the requirement that the department must furnish copies of any law or rule required to be posted. The bill deletes the requirement that the agency's license number and address must be listed on any advertisement.

The bill amends s. 468.412(8), F.S., to reference specific engagement or employment in the requirement that agencies return to the artist any fees and expenses he or she has paid to the agency for the procuring employment if the agency fails to procure employment.

Section 9. The bill amends s. 468.413, F.S., to provide that the following acts would constitute a third degree felony if related to services provided by a talent agency:

- Acts involving false statements, fraud or misrepresentation.
- Establishing an agency where alcoholic beverages are sold or gambling is permitted.
- Sending any person for employment in a house of ill fame or a place of amusement for immoral purposes or resorted to for prostitution.
- Sending a person to a place for photographing a minor in the nude without the parents' or legal guardian's consent.
- Conspiring with another agency or person to commit an act that would tend to coerce, intimidate, or preclude another agency from advertising its services.
- Exercising undue influence on the artist in manner that exploits the artist for financial gain of the agency or a third party.
- Committing sexual misconduct as prohibited in s. 468.415, F.S.

The bill deletes violations related to licensure requirements, i.e., operating without a license and fraud in obtaining a license. The bill also deletes, form the list of offences that would constitute a

second degree misdemeanor, offenses related to licensure requirements. The bill also increases the list of offenses that would constitute a second degree misdemeanor to include:

- Failing to provide copies of documents required to be provided to artists in ch. 468, F.S., including a copy of part VII of ch. 468, F.S., the annual background check, and the bond.
- Failing to maintain a bond as required in s. 468.408, F.S.
- Violating any provision of part VII of ch. 468, F.S.
- Charging, collecting, or receiving compensation for any service performed by the agency greater than specified in its schedule of maximum fees, charges, and commissions.
- Failing to post in a conspicuous place or include in the contract an itemized schedule of maximum fees, charges, and commissions which it intends to charge and collect for its services.
- Charging a registration fee, except as permitted for advance-fee talent services.
- Dividing fees with anyone, including, but not limited to, an agent or other employee of an employer, a buyer, a casting director, a producer, a director, or any venue that uses entertainment.
- Advertising goods or services in a manner that is fraudulent, false, deceptive, or misleading in form or content.
- Failing to notify an artist prior to sending an artist to an engagement that there is a strike, lockout, or other labor dispute in active progress.
- Failing or refusing upon demand to disclose any information, as required by part VII of ch. 468, F.S., within his or her knowledge, or failing or refusing to produce any document, book, or record in his or her possession for inspection, to any state attorney or any authorized agent thereof acting within the jurisdiction of the state attorney or by authority of law.
- Failing to maintain a permanent office and hours.
- Attempting to have an artist waive the right to cancel a contract.
- Failing to provide payment to the artist.
- Failing to return fees.
- Failing to maintain records.

Section 10. The bill amends s. 468.415, F.S., to include advance fee service relationships as subject to the sexual misconduct prohibition in this section. The bill also deletes provisions relating to licensure revocation for violations of this prohibition.

Section 11. The bill creates s. 468.416, F.S., to provide for judicial enforcement by state attorneys. The bill authorizes state attorneys to seek, and the courts to grant, temporary or permanent injunctions of violation of part VII of ch. 468, F.S.

Section 12. The bill creates s. 468.417, F.S., to authorize civil actions by persons harmed by a violation of a prohibited act. The bill limits the damages that may be obtained through a civil action in circuit court to a civil penalty not to exceed $5,000 for each violation, restitution and treble damages for injured parties, and court costs and reasonable attorney's fees.

Section 13. The bill abolishes the regulation of talent agencies by the department. The bill requires that any funds and balances associated with the department's regulation of talent

agencies remaining in the Professional Regulation Trust Fund after the effective date of this bill must be used to pay any remaining expenses associated with this regulation. The bill also requires that any funds or balances remaining in the trust fund after January 1, 2005, must be transferred to the General Revenue Fund.

Section 14. The bill authorizes the department to continue to prosecute pending legal proceedings in existence after the effective date of this bill.

Section 15. The bill repeals the following sections;

- s. 468.403, F.S., which relates to license requirements;
- s. 468.404, F.S., which relates to license fees and renewals;
- s. 468.405, F.S., which relates to qualifications for a talent agency license;
- s. 468.407, F.S., which relates to posting requirements pertaining to licensure; and
- s. 468.414, F.S, which relates to the deposit of fines, fees, and penalties imposed on, and collected from, talent agencies into the Professional Regulation Trust Fund.

Section 16. This bill would take effect on July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bond requirement for talent agencies would increase from $5,000 to $10,000. Talent agencies would no longer be required to remit licensure fees.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, ending the department's regulation of talent agencies would eliminate annual direct costs of approximately $3,000, and annual indirect costs in the

range of $95,671 to $93,671, which estimate is based on the costs paid by talent agents for the fiscal years 1999-2000 and 2000-2001, respectively.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. SB 2408

Amendment No. 1

072558

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/15/04

TIME: 4:30 p.m.

Senator Fasano moved the following amendment:

Senate Amendment

On page 4, lines 15 and 16, delete those lines

and insert: procurement of engagements or employment as an artist.

The term "advance-fee talent service" does not include the person or entity holding, sponsoring, advertising, or organizing an event during which the services included in paragraphs (a)-(d) are independently offered by an attendee to any other attendee of the event.

(3) "Agency" means a talent agency or an advance-fee

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2424

SPONSOR: Senator Crist

SUBJECT: Sex Offender/Probation and Control

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Clodfelter SEC	Cannon AC	CJ	
2.			JU	
3.			ACJ	
4.			AP	
5.				
6.				

I. Summary:

This bill amends s. 948.03, F.S., to prohibit certain sex offenders whose victim was a minor from having unsupervised contact with minors during their term of probation or community control. The bill also provides specified conditions for such an offender to have supervised contact with a minor. Among other things, this includes assessment of the contact risk prepared by a therapist licensed under s. 490.0143, F.S., or s. 491.0143, F.S., or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers.

This bill substantially amends section 948.03, F.S., of the Florida Statutes:

II. Present Situation:

Conditions of probation or community control are either standard or special. Standard conditions are specified as such in the statutes and do not require oral pronouncement at sentencing. If a condition is not identified as a standard condition, it is a special condition that is not enforceable unless it is orally pronounced by the court at the time of sentencing. *See Jones v. State*, 661 So.2d 50 (Fla 2nd Dist. 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

Section 948.03, F.S., provides standard conditions of probation or community control for persons who have pled or been found guilty of certain serious sexual offenses committed on or after October 1, 1995. These include ch. 794, F.S. (sexual battery), s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071, F.S., (sexual performance by a child), and s. 847.0145, F.S. (selling or buying of minors, which includes child pornography). The standard conditions not affected by this bill are:

- A mandatory curfew.
- If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate.
- Active participation and successful completion of a sex offender treatment program.
- A prohibition on any contact with the victim unless approved by the victim, the offender's therapist, and the sentencing court.
- If the victim was under 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate.
- A prohibition on viewing, owning, or possessing pornography.
- A requirement to submit two specimens of blood to FDLE for registration in the FDLE DNA databank.
- A requirement that the offender make restitution to the victim for any medical or psychological services.
- Submission to a warrantless search by probation officers.
- Several additional conditions that apply only to offenders placed on sex offender probation for a crime committed on or after October 1, 1997.

The standard condition that is relevant to this bill is set forth in s. 948.03(5)(a)5., F.S., and prohibits unsupervised contact with children under the age of 18 until completion of a sexual offender treatment program. The offender may have contact with children before completing the treatment program if there is another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court. The current statute does not specify qualifications for the person administering the sexual offender treatment program. Also, the wording of the condition is ambiguous and has resulted in varying interpretations by the courts.

According to the Department of Corrections, in Fiscal Year 2002-2003, there were 1,251 offenders placed on probation and community control for the sex offenses specified in s. 948.03(5)(b), F.S.

III. Effect of Proposed Changes:

This bill amends s. 948.03(5)(a)5., F.S., to clarify and amend the standard condition of probation or community control that regulates sex offender contact with children. All unsupervised contact with children is prohibited, regardless of whether the offender has completed a sex offender treatment program. The conditions for supervised contact are also revised to allow supervised contact only if the following conditions are met:

- The offender has completed a sex offender treatment program.
- The offender has completed an assessment of the contact risk prepared by a qualified practitioner.
- An adult who is responsible for the child's welfare and who has been advised of the crime and approved by the court is present at all times when the offender is with the child.

- Before supervised contact may begin, the responsible adult must be provided with a safety plan that details the conditions of contact and is prepared by a qualified practitioner who is treating the offender, or has treated the offender.

The bill defines "qualified practitioner" to include a therapist who is licensed by the Board of Psychology under s. 490.0143, F.S., or by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling under s. 491.0143, F.S., or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers (ATSA). The ATSA internet site describes it as an international organization focused specifically on the prevention of sexual abuse through effective management of sex offenders.

The additional protections afforded to the victim of the offense by the standard condition in s. 948.03(5)(a)4., F.S., would still apply while the victim is a minor and after the victim reaches adulthood.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The additional requirements may result in more cases for qualified practitioners, and the loss of cases for any therapists who are currently providing treatment but who are not qualified practitioners as defined in the bill. It is also possible that the enhanced requirements may be more costly to the sexual offender.

C. Government Sector Impact:

The Department of Corrections does not anticipate that this bill will have a fiscal impact upon the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. SB 2424

Amendment No. 1

853658

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 1:10 p.m.

Senator Crist moved the following amendment:

Senate Amendment

On page 3, lines 12 and 13, delete those lines

and insert:

d. Before supervised contact begins, the responsible adult has been provided with a safety plan,

Bill No. SB 2424

Amendment No. 2

910974

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 12:15 p.m.

Senator Crist moved the following amendment:

Senate Amendment

On page 3, line 19, delete that line

and insert: or s. 491.0143 or equivalent licensure in another state and who is a clinical member of

SENATE AMENDMENT

Bill No. SB 2424

Amendment No. 3 305380

CHAMBER ACTION

Senate House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 12:15 p.m.

Senator Crist moved the following amendment:

Senate Amendment (with title amendment)

On page 4, between lines 17 and 18,

insert:

Section 2. Section 827.031, Florida Statutes, is created to read:

827.031 Failure by an adult to supervise sex offense probationer or community controllee and minor.--Any person designated as an "adult responsible for a child's welfare" by the Parole Commission under s. 947.1405(7)(a)5. or by a court under s. 948.03(5)(a)5. for the purpose of supervising a probationer's or community controllee's contact with a child under the age of 18 who fails to be physically present at all times when the community controllee or probationer is having supervised contact with the child under the age of 18, or who otherwise fails to abide by a safety plan, commits a first-degree misdemeanor, punishable as provided in s. 775.082 and s. 775.083.

Section 3. Paragraph (a) of subsection (7) of section

947.1405, Florida Statutes, is amended to read:

947.1405 Conditional release program.--

(7)(a) Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

1. A mandatory curfew from 10 p.m. to 6 a.m. The commission may designate another 8-hour period if the offender's employment precludes the above specified time, and such alternative is recommended by the Department of Corrections. If the commission determines that imposing a curfew would endanger the victim, the commission may consider alternative sanctions.

2. If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate.

3. Active participation in and successful completion of a sex offender treatment program with therapists specifically trained to treat sex offenders, at the releasee's own expense. If a specially trained therapist is not available within a 50-mile radius of the releasee's residence, the offender shall participate in other appropriate therapy.

4. A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.

5. If the victim was under the age of 18, a prohibition on starting or continuing unsupervised contact with a child under the age of 18 or living with a child under the age of 18. The commission may approve supervised contact with a child under the age of 18 if ~~against direct contact or association with children under the age of 18 until all of the following conditions are met:~~

a. The offender has successfully completed a sex offender treatment program; ~~Successful completion of a sex offender treatment program.~~

b. The offender has completed an assessment of the contact risk by a qualified practitioner; ~~The adult person who is legally responsible for the welfare of the child has been advised of the nature of the crime.~~

c. An adult who is responsible for the child's welfare and who has been advised of the crime and approved by the commission is present at all times when the offender is with the child; and ~~Such adult person is present during all contact or association with the child.~~

d. Before supervised contact begins, the responsible adult has been provided with a safety plan that details the conditions of the contact and was prepared by a qualified practitioner who is treating or has treated the offender. ~~Such adult person has been approved by the commission.~~

As used in this subparagraph, the term "qualified practitioner" means a therapist licensed under s. 490.0143 or s. 491.0143 or equivalent licensure in another state and who is a clinical member of the Association for the Treatment of Sexual Abusers.

6. If the victim was under age 18, a prohibition on

working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate, as prescribed by the commission.

7. Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.

8. A requirement that the releasee must submit two specimens of blood to the Florida Department of Law Enforcement to be registered with the DNA database.

9. A requirement that the releasee make restitution to the victim, as determined by the sentencing court or the commission, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

10. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle.

(Redesignate subsequent sections.)

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 13, after the semicolon,

insert:

creating s. 827.031, F.S.; providing a criminal

penalty for failure by a responsible adult to supervise sex offense probationer or community controllee and a minor; amending s. 947.1405, F.S.; prohibiting a community controllee from having unsupervised contact with a child under the age of 18; authorizing the Parole Commission to approve supervised contact if the offender successfully completes a treatment program, a risk assessment is prepared, and an adult responsible for the child's welfare supervises the contact; requiring that the supervising adult be provided with a safety plan prepared by a qualified practitioner; defining the term "qualified practitioner";

11

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2524

SPONSOR: Home Defense, Public Security and Ports Committee and Senator Hill

SUBJECT: Seaport Security Standards

DATE: April 15, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dodson	Skelton	HP	Fav/CS
2.	Erickson	Cannon	CJ	
3.			JU	
4.			TR	
5.			GO	
6.				

I. Summary:

Committee Substitute for Senate Bill 2524 amends s. 311.12, F.S., to require that each seaport security plan has a procedure for notifying an individual that he or she is disqualified from employment within or regular access to a seaport or a restricted access area. The security plan must include a procedure for an individual to appeal a seaport's decision, and procedures for an appeal must be in substantial compliance with federal regulations governing the issuance of hazardous materials endorsements for commercial driver's licenses. The CS provides a non-exclusive list of those procedures.

Provisions enacted by the Legislature in 2003 in ch. 2003-96, L.O.F., increased from 5 years to 7 years the length of time a person must remain conviction-free after release from incarceration before he or she may qualify for employment or restricted area access. The CS provides that those seaport workers holding access credentials on June 3, 2003, who, but for the increase from 5 to 7 years implemented by ch. 2003-96, L.O.F., and who are otherwise qualified for seaport access shall not have such access denied. This provision is repealed on June 4, 2005.

The CS provides that, by October 1 of each year, each seaport must report to the Florida Department of Law Enforcement (FDLE) the number of waivers issued during the previous 12 months.

This CS amends ss. 311.12 and 311.125, F.S.

II. Present Situation:

Federal Law

The federal government has authority over any public or private port facility located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States. The Maritime Transportation Security Act of 2002 (MTSA)[1] was signed into law by President Bush on November 25, 2002. The MTSA requires the Coast Guard to conduct vulnerability assessments of vessels and facilities on or adjacent to U.S. waters. It mandates that a National Maritime Transportation Security Plan and regional Area Maritime Transportation Security Plans be developed and implemented by the Coast Guard for deterring and responding to transportation security incidents. Vessels and port facilities are required to have comprehensive security plans and incident response plans based on detailed Coast Guard vulnerability assessments and security regulations. Such security plans must be approved by the Coast Guard.

***Biometric Transportation Security Cards*:** MTSA requires that access to security sensitive areas be limited through background checks and the issuance of transportation security cards. Persons accessing secure areas on vessels or facilities are required to undergo a background check. A biometric transportation security card must be issued to individuals allowed unescorted access to a secure area of a vessel or facility.

An individual may be denied a transportation security card if that person has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony that could cause the individual to be a terrorism security risk or could cause the individual to be responsible for causing a severe transportation security incident. An individual who has been released from incarceration within the preceding 5-year period for any such felony is ineligible for a transportation security card. A person who may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act may be denied a card.

Under the MTSA provisions, the U.S. Department of Transportation must prescribe regulations that establish a waiver process for issuing a transportation security card to an individual who is ineligible to receive a card based on the reasons listed above. The waiver process must:

- Give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, federal and state mitigation remedies, and other factors from which it may be concluded that the individual does not pose a terrorism risk warranting denial of the card.

- Issue a waiver to an individual if the individual's employer establishes alternate security arrangements that are acceptable to the Department of Transportation.

The Department of Transportation is currently in the process of developing regulations relating to the issuance of biometric transportation security cards. Those regulations will include provisions for background checks, a waiver process, and an appeals process for individuals who are ineligible for a transportation security card that includes notice and an opportunity for a

[1] Maritime Transportation Security Act of 2002, Pub. L. no 107-295, 116 Stat. 2073 (2002).

hearing. To date, according to the Transportation Security Administration (TSA), federal regulations governing the issuance, appeal, and waiver process for biometric transportation security cards have not been issued and the date of release for those regulations has not been established by the TSA.

The Transportation Security Administration is currently establishing a standardized Transportation Worker Identification Credential (TWIC) system consisting of an electronic personal card that will positively identify transportation workers who require unescorted physical and logical access to secure areas and functions of the transportation system. The objective of the TWIC is to provide one standardized, common credential supported by a single integrated and secure network of databases to manage worker access into secure transportation areas and operations.[2] The Transportation Security Administration recently negotiated a Memorandum of Agreement with Florida that allows the state to participate in the federal prototype for the national transportation worker identification card.

***Commercial Drivers' Licenses - Appeal and Waiver Process*:** In addition to the security requirements of the MTSA, the USA PATRIOT Act[3] requires states to conduct background checks through the Attorney General and the TSA before issuing licenses to individuals to transport hazardous materials in commerce. Federal regulations governing the issuance of hazardous materials endorsements for a commercial drivers license (CDL) prohibit an individual from holding such a license if the individual: does not meet citizenship requirements; was convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense; has been adjudicated as a mental defective; or if the TSA has notified the individual that he or she poses a security threat. To determine if an individual poses a security threat warranting denial of authorization for a hazardous materials endorsement, the TSA conducts a security threat assessment that includes a review of citizenship status and criminal history records; TSA also performs checks of certain databases and watch lists. An individual poses a security threat when TSA determines or suspects that individual is a threat to national security, to transportation security, or poses a threat of terrorism.[4]

The regulation provides for the TSA to notify an individual that he poses a security threat warranting denial of an application for a hazardous materials endorsement. An individual may appeal the *initial* notification within 15 days after the initial notification is issued only if the individual is asserting that he or she meets the standards for authorization of the endorsement. An individual may make this assertion by presenting evidence that an underlying criminal record is incorrect or that the conviction was pardoned, expunged, or overturned on appeal.

If TSA determines that an individual poses a security threat, a final notification is issued to the individual and the state in which that individual applied for authorization. Once final determination has been made, TSA provides a *final* notification indicating that the department has determined that the individual poses a security threat warranting denial of authorization. The individual may not appeal this determination, but may apply for a waiver. For purposes of

[2] Broad Agency Announcement (BAA No. DTRS56-02-BAA-0005), U.S. Transportation Security Administration, June 24, 2002.
[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, P.L. 107-56.
[4] 49 C.F.R. Part 1572 (2003).

judicial review, the final notification constitutes a final TSA order in accordance with 49 U.S.C. 46110.

A person who does not meet the standards for authorization for a hazardous materials endorsement may apply to TSA for a waiver. In determining whether to grant a waiver, if the disqualification was based on a disqualifying criminal offense, TSA will consider: the circumstances of the disqualifying offense; restitution made; any federal or state mitigation remedies; and other factors that indicate the person does not pose a security threat.

Florida Law

In its final report issued in November of 1999, the Florida Legislative Task Force on Illicit Money Laundering recommended the establishment of minimum security standards for the state's seaports. The 2000 Legislature directed the Governor's Office of Drug Control to develop a statewide security plan for Florida's seaports. The Office of Drug Control was directed to develop statewide minimum security standards and each seaport was required to develop individual security plans based on the statewide standards.[5]

Statewide Minimum Standards: Section 311.12, F.S., provides statewide minimum security standards for the following deepwater seaports: Jacksonville, Port Canaveral, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. Each seaport must maintain a security plan that is tailored to meet the individual needs of the port and assures compliance with the statewide standards. As part of each security plan, a seaport may designate restricted access areas within the seaport.[6] These restricted areas include those areas required by federal law to be "restricted" or "secure" areas, and any other areas selected by a seaport for designation as a restricted area.

Criminal History Checks: Section 311.12(3)(a), F.S., requires that a fingerprint-based criminal history check be performed on any applicant for employment, every current employee, and other persons as designated pursuant to the seaport security plan. Each seaport security plan must identify criminal convictions or other criminal history factors that disqualify a person from either initial seaport employment or new authorization for regular access to seaport property or to a restricted area.

Any person who, within the past seven years, has been convicted for the following offenses, regardless of whether adjudication was withheld, does not qualify for employment or access to restricted areas at a seaport:

- A forcible felony as defined in s. 776.08, F.S.;
- An act of terrorism as defined in s. 775.30, F.S.;
- Planting of a hoax bomb as provided in s. 790.165, F.S.;
- Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166, F.S.[7];

[5] Ch. 2000-360, L.O.F.
[6] s. 311.12(2), F.S.
[7] s. 311.12(3)(c), F.S.

- Dealing in stolen property;
- Drug trafficking;
- Any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance;
- Burglary;
- Robbery;
- Display, use, threaten, attempt to use any weapon while committing or attempting to commit a felony;
- Any crime an element of which includes use or possession of a firearm;
- Similar offenses under the laws of another jurisdiction; or
- Conspiracy to commit any of the listed offenses.

A person who has been convicted for any of the offenses listed does not qualify for initial employment or authorized regular access to either a seaport or restricted area unless, after release from incarceration (and any post incarceration supervision), the person remains free from any subsequent conviction for such offenses for 7 years preceding the employment or access date under consideration.

Uniform Port Access Credential System: Each seaport subject to the statewide minimum seaport security standards must use a Uniform Port Access Credential Card that is accepted at all identified seaports. Each seaport is responsible for operating and maintaining the system to control access security within the boundaries of the seaport. A fingerprint-based criminal history check is performed on each credential applicant to determine that the individual does not have a conviction for a disqualifying criminal offense.

Appeal Procedure/Waivers: Each seaport security plan may establish a procedure to appeal a denial of employment or access based on procedural inaccuracies or discrepancies regarding criminal history factors. A seaport may allow waivers on a temporary basis to meet special or emergency needs of the seaport or its users. All waivers granted under these provisions must be reported to FDLE within 30 days of issuance.[8]

III. Effect of Proposed Changes:

Notification and Appeal Procedures: The CS amends s. 311.12, F.S., to require each seaport, as part of its security plan, to establish a procedure to notify an individual that he or she is disqualified for employment within or regular access to a seaport or a restricted access area when that individual has been disqualified from employment based on criminal convictions or other criminal history factors. The security plan must also include a procedure by which a person may appeal the decision of the seaport to disqualify that person from employment or restricted area access.

A seaport's procedures for notification and appeal must be in substantial compliance with 49 C.F.R., Part 1572, which provides regulations for the issuance of hazardous materials endorsements for commercial driver's licenses and individuals who hold or are applying for a hazardous materials endorsement.

[8] s. 311.12(3)(b), F.S.

The CS provides a non-exclusive list of notification and appeal procedures for employment disqualification. The Maritime Transportation Security Act of 2002 (MTSA)[9] requires the Department of Transportation to prescribe federal regulations governing the issuance of transportation worker identification cards to include provisions for background checks, a waiver process, and an appeals process for individuals who are ineligible for a card. As noted previously in this analysis, regulations for the Transportation Worker Identification Credential (TWIC) have not been issued by the Transportation Security Administration, and the date of release for those regulations has not been established. The criteria provided in the CS for use by seaports in developing notification and appeals procedures are similar to those found in federal regulations governing commercial driver licenses. The procedures must include, but are not limited to:

- A seaport must provide written notification to an individual that he or she poses a security threat to the seaport and is disqualified for employment in or access to the seaport. In addition to a statement from the seaport that the individual has been determined to pose a security threat warranting disqualification, the notification must include the basis for the determination and information about the correction of records and appeal procedures.

- An individual may appeal a disqualification determination only if the individual asserts that he or she meets the seaport's qualifications for the position applied for. If the disqualifying determination is based on a conviction for a disqualifying offense, the individual may present evidence that the underlying criminal record is incorrect or that the conviction was pardoned, expunged, or overturned on appeal; such pardon, expungement, or conviction may nullify a disqualifying conviction if the pardon, expungement, or conviction does not impose any restrictions on the person.

- A person may initiate an appeal of a disqualification determination in writing to the seaport within 15 days of receiving notification of the determination. If the individual does not initiate an appeal within that time, the seaport's decision is final.

- The individual may make a written request to the seaport for copies of materials upon which a disqualification determination is based. If the determination was based on a state or Federal Bureau of Investigation criminal history record that the person believes is erroneous, the individual may correct the record and submit corrections to the seaport. Seaports are required to respond within 30 days after receiving an individual's request for materials. The seaport is required to provide the individual a copy of releasable materials and the seaport may not include any classified information as provided under federal law.

- An individual may serve a written reply to the seaport stating that the seaport made errors when issuing a disqualification determination.

- A seaport is required to respond to an appeal no later than 30 days after receiving an individual's request. If a seaport determines that a person poses a security threat, the seaport must provide written notice to the individual of its final decision that the person is

[9] Maritime Transportation Security Act of 2002, Pub. L. no 107-295, 116 Stat. 2073 (2002).

disqualified for employment in or access to the seaport. If, upon reconsideration, the seaport concludes that the individual does not pose a security threat, the individual must be given written notification of this decision, and the seaport must issue a Uniform Port Access Credential Card to the individual.

- If the seaport makes a determination that an individual poses a security threat, the seaport's decision is considered final agency action subject to judicial review under ch. 120, F.S., where applicable, or if the seaport is not subject to ch. 120, F.S., that the seaport's decision is subject to judicial review in circuit court.

A seaport may grant waivers on a temporary basis to meet special or emergency needs. The seaport security plan must include policies, procedures, and criteria for the granting of waivers and the seaport must consider, if a disqualification is based on a disqualifying offense, the circumstances of the offense, whether the individual made restitution, and other factors. The seaport must provide written notification to an individual of its decision regarding a waiver request. Waivers granted under the provisions of this bill must be reported to FDLE within 30 days after issuance.

Chapter 2003-96, L.O.F., increased from 5 years to 7 years the period of time for which an individual must remain free of a conviction for a disqualifying offense before that individual may qualify for employment or restricted area access on a seaport. The law also increased from 5 to 7 years the length of time a person must remain conviction-free after release from incarceration before he or she may qualify for employment or restricted area access.

Shortly after the passage of ch. 2003-96, L.O.F., FDLE addressed concerns about an unintended potential consequence the law might have on seaport workers who had met the 5 year conviction-free requirement under the prior law and who were satisfactorily employed in secured areas of seaports, but had not yet reached the 7 year conviction-free requirement. FDLE determined that in such instances a seaport could exercise its authority under s. 311.12(3)(b), F.S., to articulate a special need to allow otherwise acceptable workers who had met the 5 year requirement under the previous law to continue to work under waiver of access standards. Based upon this determination, FDLE advised that limited waivers of criminal history standards may be granted by seaports to workers whose sole disqualification is that the person has not yet secured a full 7 years conviction-free period as required by ch. 2003-96, L.O.F.

The CS clarifies that those seaport workers holding access credentials on June 3, 2003, who, but for the increase from 5 to 7 years implemented by ch. 2003-96, L.O.F., and who are otherwise qualified for seaport access shall not have such access denied. This provision is repealed on June 4, 2005.

The CS provides that, by October 1 of each year, each seaport must report to the Florida Department of Law Enforcement (FDLE) the number of waivers issued during the previous 12 months.

The CS amends s. 311.125, F.S., to make conforming changes as a result of the amendments of s. 311.12, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The implementation of the appeal and waiver procedures for employment disqualification will have an indeterminate fiscal impact on seaports.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

Bill No. CS for SB 2524

Amendment No. 1 752980

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/16/04

TIME: 10:30 a.m.

Senator Hill moved the following amendment:

Senate Amendment (with title amendment)

On page 3, lines 15, through

page 9, line 3, delete those lines

and insert:

(3)(a) A fingerprint-based criminal history check shall be performed on any applicant for employment, every current employee, and other persons as designated under ~~pursuant to~~ the seaport security plan for each seaport. The criminal history check shall be performed in connection with employment within or other authorized regular access to a restricted access area or the entire seaport if the seaport security plan does not designate one or more restricted access areas. With respect to employees or others with regular access, the ~~such~~ checks shall be performed at least once every 5 years or at other more frequent intervals as provided by the seaport security plan. Each individual subject to the background criminal history check shall file a complete set of fingerprints taken in a manner required by the Department of

Law Enforcement and the seaport security plan. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The results of each fingerprint-based check shall be reported to the requesting seaport. The costs of the checks, consistent with s. 943.053(3), shall be paid by the seaport or other employing entity or by the person checked.

(b)1. By January 1, 2002, each seaport security plan shall identify criminal convictions or other criminal history factors consistent with paragraph (e) ~~(c)~~ which shall disqualify a person from either initial seaport employment or new authorization for regular access to seaport property or to a restricted access area. These ~~Such~~ factors shall be used to disqualify all applicants for employment or others seeking regular access to the seaport or restricted access area on or after January 1, 2002, and may be used to disqualify all those employed or authorized for regular access on that date. Each seaport security plan may establish a procedure to appeal a denial of employment or access based upon procedural inaccuracies or discrepancies regarding criminal history factors established pursuant to this paragraph. A seaport may allow waivers on a temporary basis to meet special or emergency needs of the seaport or its users. Policies, procedures, and criteria for implementation of this subsection shall be included in the seaport security plan. All waivers granted pursuant to this paragraph must be reported to the Department of Law Enforcement within 30 days of issuance.

2. Notwithstanding this paragraph, when any person is denied employment or access to a seaport on the basis that the person does not meet the criminal history standards imposed by

this section, the person denied employment or access to the seaport shall receive written notification of the denial from the seaport stating the specific criminal history element or factors forming the basis for the denial. The notification shall include information explaining how the person may seek a review of his criminal history through the Department of Law Enforcement. The notice shall also inform the person that he or she may request the seaport to reconsider the person's request for employment or access if the person believes the denial has been made in error or based upon an erroneous criminal history entry that has subsequently been corrected. The person may resubmit his or her request for employment or access if the resubmission request demonstrates a belief that the seaport made an error in initially interpreting the person's criminal history, or the resubmission demonstrates that the person's criminal history files have, subsequent to the initial review and denial, been modified or corrected. A request for resubmission must state with specificity the basis upon which the person believes an error was made and why the person believes he or she is not barred by the statutory criminal history disqualifications. A seaport receiving a resubmission shall promptly review the submission and determine whether the person is or is not barred from employment or access based on the person's criminal history and the requirements of this section. The seaport's determination after the secondary review shall be communicated to the person in writing.

(c) In addition to other requirements for employment or access established by each seaport under ~~pursuant to~~ its seaport security plan, each seaport security plan shall provide that:

1. Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses is ~~shall~~ not be qualified for initial employment within or regular access to a seaport or restricted access area; and

2. Any person who has at any time been convicted for any of the listed offenses is ~~shall~~ not be qualified for initial employment within or authorized regular access to a seaport or restricted access area unless, after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration. Provided, however, that any worker holding credentials allowing regular access as provided herein on June 3, 2003, who, but for the increase from 5 to 7 years as implemented by chapter 2003-96,

Laws of Florida, and who is otherwise qualified for such regular access shall not have qualified access denied. This provision is repealed on June 4, 2005.

(d) By October 1 of each year, each seaport shall report to the Department of Law Enforcement each determination of denial of employment or access, and any determination to authorize employment or access after an appeal of a denial and any determination to issue a waiver made during the previous 12 months. The report shall include the identity of the individual affected, the factors supporting the determination, and any other material factors used in making the determination.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, lines 8 through 15, delete those lines

and insert:

access area; providing that a person may request the seaport denying employment or access to reconsider its decision; providing conditions for requesting reconsideration; providing that certain

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2616

SPONSOR: Natural Resources Committee and Senator Atwater

SUBJECT: Water Management District Employees, Appointees and Contractors

DATE: April 19, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Dodson	Skelton	HP	Fav/1 amendment
3.	Erickson	Cannon	CJ	
4.				
5.				
6.				

I. Summary:

Committee Substitute for Senate Bill 2616 authorizes the water management districts (districts) to conduct employment screening, including a criminal history record check and fingerprinting, for an employee, appointee, employment applicant, or for any private contractor, employee of a contractor, vendor, repair person or delivery person having access to any public facility or any publicly operated facility within the water management district's jurisdiction if the district finds the facility is critical to security or safety.

This CS creates section 373.6055, F.S.

II. Present Situation:

Chapter 110, F.S.
Section 110.127, F.S., authorizes employing agencies to designate employee positions that, because of the special trust or responsibility or sensitive location of those positions, require that persons occupying those positions be subject to a security background check, including fingerprinting, as a condition of employment. For purposes of the chapter, "employing agencies" is defined as any agency authorized to employ personnel to carry out the responsibilities of the agency under the provisions of ch. 20, F.S., or other statutory authority.

Chapter 435, F.S.
Section 435.03, F.S., provides for Level 1 screening standards for employees required by law to be screened as a condition of employment. Level 1 screenings include employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE). An employment disqualification list is established for persons applying for

Level 1 positions. These persons may not have been found guilty of offenses such as aggravated assault, vehicular homicide, elder abuse or neglect, aggravated battery, and kidnapping.

Section 435.04, F.S., provides for Level 2 screening standards for employment which includes fingerprinting, as well as employment history checks and statewide criminal correspondence checks. An employment disqualification list is also established for Level 2 positions and includes additional offenses such as negligent treatment of children, resisting arrest with violence, aiding in an escape, and depriving a law enforcement officer of means of protection.

Chapter 943, F.S.
Under ch. 943, F.S., the FDLE is the state's central repository for criminal record information and has the third largest computerized criminal history file in the nation which contains criminal history records on more than four million offenders. The FDLE maintains and provides access to criminal history information which is commonly used for security and background screening of individuals.

Protection of Water Supplies and Water Facilities
The protection of water supplies and water supply facilities has gained significance since September, 2001. Because of water's importance to the public health and safety, increased security measures at water system components and infrastructure are necessary to ensure water quantity, water quality, and water delivery, and to prevent disruption of essential water services.

III. Effect of Proposed Changes:

Section 1 creates s. 373.6055, F.S., to provide that each water management district is authorized to conduct employment screening of any employee or appointee whom the water management finds is critical to security or public safety. Each district also is authorized to conduct employment screening of any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility under the jurisdiction of the water management district if the district determines the facility is critical to security or safety.

Each person applying for or continuing employment in any position found by the district to be critical to security or public safety may be fingerprinted. The CS requires fingerprints for such persons to be submitted to the FDLE for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check.

The CS authorizes the use of information received from state and national criminal history record checks in determining eligibility for employment or appointment, and in determining eligibility for continued employment. Criminal background checks authorized in this section do not preempt or prevent other background screening including criminal history background checks that a water management district may undertake.

Section 2 provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to the South Florida Water Management District, the private sector will bear the costs of screening or fingerprinting private contractors, employees of private contractors, vendors, repair persons, or delivery persons with access to facilities that the water management districts have designated as critical or secure facilities. Many of the private sector contractors doing business with the district also do business with local governments and have already been fingerprinted.

C. Government Sector Impact:

The South Florida Water Management District expects that this CS will have no fiscal impact on other state agencies and will have a minimal impact on the district as the fingerprinting provisions of the CS are permissive, and the costs of employment screening will be absorbed by the district.

Costs for the district are estimated as follows:

Total district employees: approximately 1800
Total number of employees to be fingerprinted: approximately 180 (10 percent)
Cost per employee: $27
Total non-recurring cost: $4,680

VI. Technical Deficiencies:

None.

VII. Related Issues:

This CS authorizes the water management districts to conduct a criminal investigation on any private contractor, an employee of a private contractor, vendor, repair person, or delivery person with access to ***any*** public facility or publicly operated facility which the water management district finds is critical to security or safety.

VIII. Amendments:

#1 by Home Defense, Public Security, and Ports:
On April 16, 2004, the Committee on Home Defense, Public Security, and Ports adopted a strike everything amendment that clarifies the process for water management districts to conduct fingerprint based criminal history checks of current or prospective employees and others with regular access to restricted access areas. Water management districts with structures or facilities designated as "tier one" critical infrastructure by the Federal Bureau of Investigation are *required* to conduct the criminal history checks while water management districts without such tier one infrastructures are authorized to conduct the checks. (In contrast, the CS simply *authorizes* the water management districts to conduct employment screening.)

Water management district security plans for buildings, facilities, and structures must identify criminal convictions or other criminal history factors that disqualify a person from either initial employment or restricted area access. (Unlike the CS, the strike everything amendment references any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance.) The amendment provides that any person who has within the past 7 years been convicted of certain offenses does not qualify for employment or access to a restricted area. A person must remain conviction-free for a period of 7 years after release from incarceration before he or she may qualify for employment or restricted area access. (WITH TITLE AMENDMENT)

Bill No. CS for SB 2616

Amendment No. 1 075140

CHAMBER ACTION

Senate House

Traveling With the Bill

The Committee on Home Defense, Public Security, and Ports recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 373.6055, Florida Statutes, is created to read:

373.6055 Criminal history checks for certain water management district employees and others.

(1) A water management district which has structures or facilities designated as "tier one" critical infrastructure by the Federal Bureau of Investigation shall be required to conduct a fingerprint based criminal history check for any current or prospective employee and others designated pursuant to the water management district's security plan for buildings, facilities, and structures if those persons are allowed regular access to those buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

(2) A water management district which has structures or facilities which are not designated as "tier one" critical infrastructure by the Federal Bureau of Investigation is authorized to to conduct a fingerprint based criminal history check for any current or prospective employee and others designated pursuant to the water management district's security plan for buildings, facilities, and structures if those persons are allowed regular access to critical buildings, facilities, or structures defined in the water management district's security plan as restricted access areas.

(3)(a) The fingerprint based criminal history check shall be performed on any individual described in subsection (1) pursuant to the applicable water management district security plan for buildings, facilities, and structures. With respect to employees or others with regular access, such checks shall be performed at least once every 5 years or at other more frequent intervals as provided by the water management district security plan for buildings, facilities, and structures. Each individual subject to the criminal history check shall file a complete set of fingerprints with the Department of Law Enforcement taken in a manner required by the Department of Law Enforcement and the water management district security plan for buildings, facilities, and structures. Fingerprints shall be submitted to the Department of Law Enforcement for state processing and to the Federal Bureau of Investigation for federal processing. The results of each fingerprint based check shall be reported to the requesting water management district. The costs of the checks, consistent with s. 943.053(3), shall be paid by the water management district or other employing entity or by the

individual checked.

(b) Each water management district security plan for buildings, facilities, and structures shall identify criminal convictions or other criminal history factors consistent with paragraph (c) which shall disqualify a person from either initial employment or authorization for regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas. Such factors shall be used to disqualify all applicants or employment or others seeking regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas on or after the effective date of the water management district security plan for buildings, facilities, and structures and may be used to disqualify all those employed or authorized for regular access as of that date. Each water management district may establish a procedure to appeal a denial of employment or access based upon procedural inaccuracies or discrepancies regarding criminal history factors established pursuant to this paragraph. A water management district may allow waivers on a temporary basis to meet special or emergency needs of the water management district or its users. Policies, procedures, and criteria for implementation of this subsection shall be included in the water management district security plan for buildings, facilities, and structures.

(c) In addition to other requirements for employment or access established by any water management district pursuant to its water management district security plan for buildings, facilities, and structures, each water management district security plan shall provide that: (1) Any person who has within the past 7 years been convicted, regardless of

whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas; and (2) Any person who has at any time been convicted for any of the listed offenses shall not be qualified for initial employment within or authorized regular access to buildings, facilities, or structures defined in the water management district's security plan as restricted access areas, unless after release from incarceration and any supervision imposed as a sentence, the person remained free from a subsequent conviction, regardless of whether adjudication was withheld, for any of the listed offenses for a period of at least 7 years prior to the employment or access date under consideration.

Section 2. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to water management district employees; creating s. 373.6055, F.S.; requiring water management districts with structure or facilities designated as "tier one" critical infrastructures by the Federal Bureau of Investigation to conduct fingerprint based criminal history checks of current or prospective employees and other persons allowed regular access to restricted access areas pursuant to applicable security plans; authorizing water management districts with structures or facilities which are not designated as "tier one" critical infrastructure by the Federal Bureau of Investigation to conduct fingerprint based criminal history checks of current or prospective employees and other persons allowed regular access to restricted access areas pursuant to applicable security plans; requiring additional criminal history checks; requiring that fingerprints of applicants and employees be submitted to the Department of Law Enforcement and the Federal Bureau of Investigation for processing; providing for costs of criminal history checks to be paid by

water management districts, other employing entities; or by individuals checked; requiring that water management district security plans identify criminal history convictions or criminal history factors which disqualify applicants for employment and restricted area access and authorizing the use of such factors to disqualify certain employees; authorizing water management districts to establish procedures to appeal a denial of employment or access under certain circumstances and authorizing each water management district to grant temporary waivers to meet special or emergency needs of the water management district; providing offenses that disqualify a person from employment or access to a restricted access area; providing that an individual remain free from subsequent convictions for 7 years before seeking employment or access to a restricted access area; authorizing each water management district to develop security plans; providing an effective date.

13

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2626

SPONSOR: Senator Crist

SUBJECT: Interstate Compact for Juveniles

DATE: April 7, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	
2.			GO	
3.			JU	
4.			ACJ	
5.			AP	
6.				

I. Summary:

Senate Bill 2626 substantially amends s. 985.502, F.S., to revise and update the provisions of the current Interstate Compact on Juveniles, which provides for cooperation among states in supervising and returning juveniles who have run away or escaped from detention across state boundaries as follows:

- Establishes an independent compact administrative agency with the authority to administer ongoing compact activity, including a provision for full-time staff support (National Commission).
- Provides gubernatorial appointment of authorized voting representatives for all member states on a national governing commission, which meets at least annually to attend to general business, rule making, and enforcement procedures on behalf of the administrative body.
- Delegates rule making authority to the National Commission and makes provisions for sanctions to administer and enforce the operation of the compact.
- Provides a mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, and training/education).
- Provides for the collection of standardized information and information sharing systems.
- Provides for the coordination and cooperation with other interstate compacts which have "overlapping" jurisdiction (like the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision).
- Mandates states to create a state council, which would be comprised of a compact administrator, and representatives from each of the three branches of government, and a victim advocate representative.
- Creates additional duties and responsibilities for the compact administrator.

According to the Council of State Governments (CSG) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), eleven states have passed legislation revising and updating the interstate compact and many more states, like Florida, are taking up the legislation for consideration. Once 35 states have passed the new compact language, it will go into effect. The CSG and the OJJDP estimate this to be in the spring or fall of 2006.

This bill substantially amends section 985.502 and repeals sections 985.503, 985.504, 985.505, 985.506, and 985.507 of the Florida Statutes.

II. Present Situation:

Part V of Chapter 985, F.S., (ss. 985.501- 985.507), contains the Interstate Compact on Juveniles. This compact provides for the movement of juveniles across state lines as follows:

- Transfer of supervision of delinquent juveniles on probation or parole from one state to another;
- Extradition of juveniles who have been adjudicated by the court and escaped or absconded to other states while under the court's jurisdiction;
- Extradition of juveniles who have not yet been adjudicated delinquent but who have been "charged" as being delinquent; and
- Return of non-delinquent runaways to their home state when informal arrangements cannot be made between the holding facility and the runaway's parent or guardian.

The Council of State Governments (CSG) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) are the agencies overseeing the drafting and introduction of the updated Interstate Compact for Juveniles among all the states. According to these oversight agencies, the current compact was written 48 years ago to serve a juvenile population that looks very different now. The compact authorizes state compact administrators to act jointly with other state administrators to adopt rules and regulations that are more effective in implementing the terms of the compact. However, the Association of Juvenile Compact Administrators (AJCA) is not specifically authorized to function in this capacity, which leaves AJCA powerless to enforce the current rules and regulations.

Another problem is some states interpret the interstate compact laws differently and there is no central body that can provide uniform interpretation or legal opinion of the current laws, rules, and regulations. In addition, some participating states choose not to cooperate or claim they have no funding to cooperate with other states in moving juveniles across state lines. There are currently no legal consequences for violating the compact. Moreover, many jurisdictions have expanded supervision and program expectations to include victim input and notification requirements, as well as sex offender registration, none of which are covered under the current compact law.

According to the CSG and the OJJDP, eleven states have passed legislation revising and updating the interstate compact and many more states, like Florida, are taking up the legislation for consideration. Once 35 states have passed the new compact language, it will go into effect. The CSG and the OJJDP estimate this to be in the spring or fall of 2006.

III. Effect of Proposed Changes:

Senate Bill 2626 substantially amends s. 985.502, F.S., to revise and update the provisions of the current Interstate Compact on Juveniles, which provides for cooperation among states in supervising and returning juveniles who have run away or escaped from detention across state boundaries as follows:

- Establishes an independent compact administrative agency with the authority to administer ongoing compact activity, including a provision for full-time staff support (National Commission).
- Provides gubernatorial appointment of authorized voting representatives for all member states on a national governing commission, which meets at least annually to attend to general business, rule making, and enforcement procedures on behalf of the administrative body.
- Delegates rule making authority to the National Commission and makes provisions for sanctions to administer and enforce the operation of the compact.
- Provides a mandatory funding mechanism sufficient to support essential compact operations (staffing, data collection, and training/education).
- Provides for the collection of standardized information and information sharing systems.
- Provides for the coordination and cooperation with other interstate compacts which have "overlapping" jurisdiction (like the Interstate Compact on the Placement of Children and the Interstate Compact for Adult Offender Supervision).
- Mandates states to create a state council, which would be comprised of a compact administrator, and representatives from the each of the three branches of government, and a victim advocate representative.
- Creates additional duties and responsibilities for the compact administrator.

According to the DJJ, this bill will provide for the development of better enforcement and accountability measures, provide more training to local and state juvenile justice officials, and improve the speed and quality of communication through the use of technology. The department states that Florida is currently operating under the rules and regulations of the AJCA. If this new compact is passed, Florida will have a law making these current rules and regulations as binding as law. But as a practical matter, the current operating procedures for the Florida Interstate Compact for Juveniles will not be affected.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DJJ, there will be a state fiscal impact as a result of this legislation; however, it will not affect the budget until approximately 2005-2006. (This is after 35 states have passed the legislation and the National Commission has been established.) Dues paid to the National Commission are based upon the population served. *It is estimated the fiscal impact to Florida will be $37,000 annually.* This amount may be reduced, depending on whether the National Commission on the Interstate Compact for Juveniles decides to use the same National Commission staff that's used for the Interstate Compact for Adult Offender Supervision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The DJJ states that Florida has the largest caseload of "Interstate Compact on Juveniles" in the nation and will be greatly impacted by passage of this new law. Florida sends more requests for supervision transfer than it receives. If Florida does not adopt this legislation by the time it has been passed by 35 other states, it will negatively impact the state's juvenile justice system and the juvenile offenders leaving and entering the state, according to the DJJ. The department states that not passing this legislation will also impact juvenile extradition and the return of non-delinquent runaways to and from Florida, thus possibly creating a greater liability with regard to the offenders leaving the state under Florida court jurisdiction.

VIII. Amendments:

None.

Bill No. SB 2626

Amendment No. 1

663362

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 12:15 pm.

Senator Crist moved the following amendment:

Senate Amendment

On page 2, lines 16-19, delete those lines

and insert:

985.502 Execution of interstate compact for juveniles.--The Governor is hereby authorized and directed to execute a compact on behalf of this state with any other state or states legally joining therein in the form substantially as follows. No provision of this compact will interfere with this state's authority to determine policy regarding juvenile offenders and nonoffenders within this state.

Bill No. SB 2626

Amendment No. 2

342470

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 12:15 pm.

Senator Crist moved the following amendment:

Senate Amendment

On page 21, line 25, following the word "groups,"

insert: a parent of a youth who is not currently in the juvenile justice system,

Bill No. SB 2626

Amendment No. 3

602918

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/19/04

TIME: 12:15 P.M.

Senator Crist moved the following amendment:

Senate Amendment

On page 27, line 17, delete that line

and insert: the constitutional limits imposed on any

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2664

SPONSOR: Natural Resources Committee and Senator Smith

SUBJECT: Vessel Safety

DATE: April 19, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Kiger	NR	Fav/CS
2.	Dodson	Skelton	HP	Favorable
3.	Erickson MES	Cannon AC	CJ	
4.			AGG	
5.			AP	
6.				

I. Summary:

Committee Substitute (CS) for Senate Bill 2664 authorizes the operation of law enforcement vehicles without the display of lighted lamps under certain conditions. The threshold for owners or operators of vessels to report damage to vessels or property resulting from boating accidents is raised from $500 to $2,000. Law enforcement officers must submit written investigative reports regarding boating accidents resulting in damage to vessels or other property, within 24 hours after completing an investigation, to the Division of Law Enforcement (division) at the Fish and Wildlife Conservation Commission (FWCC); the bill raises the damage threshold from $500 to $2,000 for the reporting of such accidents. If a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving damage to the vessel or other property.

The CS authorizes state and local law enforcement personnel to operate in federally designated safety zones, security zones, regulated navigation areas, or naval vessel protection zones if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of the state. The federal government's requests for enforcement assistance must be made to the Florida Department of Law Enforcement (FDLE) through the Florida Mutual Aid Plan established in s. 23.1231, F.S.

The CS provides that persons may not operate a vessel, or authorize the operation of a vessel within the federally designated exclusion areas, and creates misdemeanor and felony penalties for persons violating provisions of the CS relating to those federally designated areas. Law enforcement officers are provided with authority to arrest persons without a warrant when there is probable cause to believe that a person has committed a violation of a federally designated safety zone, security zone, regulated navigation area, or naval vessel protection zone.

This CS substantially amends ss. 316.217, 327.301, 327.35215, 327.731, and 901.15, F.S., and creates s. 327.461, F.S.

II. Present Situation:

Lighted Lamps on vehicles - Section 316.217, F.S., provides that every vehicle operated upon a highway within the state shall display lighted lamps and illuminating devices at any time from sunset to sunrise, including the twilight hours, and during any rain, smoke, or fog. The statutes do not contain an exemption from the lighting requirements for law enforcement officers.

According to the FWCC's *Commission Approved Legislative Proposals 2004 Session*, federal, state, and local law enforcement officers operate without headlights to conduct investigations and apprehend violators and as a matter of safety when an officer is approaching a potentially dangerous situation. The FWCC "currently prohibits the use of vehicles at night without full compliance with the laws addressing vehicle lighting" but also states that "operating without headlights is especially useful for patrol operations due to the unique nature of conservation law enforcement. FWCC law enforcement patrols are conducted on large, rural, unlighted land and water areas. The use of headlights when approaching potential criminal activities places the officer at a tactical disadvantage while greatly impeding the ability of officers to apprehend violators and discover criminal acts."

Federally designated exclusion areas - Federally designated safety zones, security zones, regulated navigation areas, and naval vessel protection areas are provided for in Title 33, Code of Federal Regulations (C.F.R.), part 165.

- A safety zone is a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It can be stationary and described by fixed limits, or it may be described as a zone around a vessel in motion.
- A security zone is an area of land, water, or land and water which is so designated by the Captain of the Port or District Commander for as long as is necessary to prevent damage or injury to any vessel or waterfront facility, and to safeguard ports, harbors, territories, or waters of the United Sates from destruction, loss or injury from sabotage, or other subversive acts or accidents.
- A regulated navigation area is a water area within a defined boundary for which vessel navigation regulations are established under 33 C.F.R. part 165.
- A naval vessel protection zone is a 500-yard regulated area of water surrounding large U.S. naval vessels that is necessary to provide for the safety or security of those vessels.

FWCC Homeland Security Law Enforcement Assistance - According to information provided by the FWCC, the agency has provided more than 34,000 hours of directed patrol addressing domestic security at a cost of roughly $2 million. After September 11, 2001, the U.S. Coast Guard requested that the FWCC assist in providing waterside security in the federal security zones surrounding cruise vessels while ported in Florida ports. This service continues today at a cost of approximately $90,000 a month with no federal reimbursement for normal duty operations. During times of "high alert," the FWCC estimates that costs rise approximately 20 percent.

However, state law does not authorize the FWCC to enforce in federally established exclusion areas. In two specific cases, a group of divers and a vessel violated the federally designated exclusion areas but without specific enforcement authority, the FWCC could only detain the violators until the U.S. Coast Guard arrived to take them into custody.

Florida Mutual Aid Plan - The Florida Mutual Aid Plan (Plan) outlines the responsibilities of the state law enforcement community, as well as the security component of the Florida National Guard, in responding to emergencies and disasters. The plan is developed under the authority of the Florida Mutual Aid Act contained in ch. 23, Part I, F.S., and is revised annually[1]

Under the Plan, the FWCC's Division of Law Enforcement is responsible for conducting waterborne security, evacuations, search and rescue, waterborne law enforcement, and patrol of rural natural areas. The FWCC is required to assist the FDLE with communications issues and assist in missions where specialized assets and equipment such as 4 x 4 vehicles, ATVs, vessels, and aircraft are required. According to the FWCC, the agency does not have vessels that are the proper size or construction to withstand this assignment.

III. Effect of Proposed Changes:

Provided is a section-by-section analysis of the CS:

Section 1. Amends s. 316.217, F.S., to authorize the operation of law enforcement vehicles without the display of lighted lamps under the following conditions:

- If operation of the vehicle is necessary to the performance of a law enforcement officer's duties.
- If the law enforcement agency has a written policy providing guidelines and authorizing the operation of a vehicle without the display of lighted lamps.
- If the law enforcement vehicle is being operated in compliance with agency policy.
- If the operation of the vehicle without the display of lighted lamps can be safely accomplished.

The authority to operate a vehicle with the display of lighted lamps does not relieve the vehicle operator of the duty to drive with due regard for public safety, or provide protection to the vehicle operator from the consequences of operating the vehicle with reckless disregard for the safety of others.

Section 2. Amends s. 327.301, F.S., to raise from $500 to $2,000 the threshold for which owners or operators of vessels must forward to the division a written report of damage to vessels or property resulting from boating accidents. The CS raises from $500 to $2,000 the threshold at which law enforcement officers who investigate a boating accident resulting in damage to vessels or other property must forward a written report of the investigation to the division within 24 hours. If a vessel is leased, rented, or chartered at the time of an accident, the person offering the vessel for lease, rent, or charter is responsible for reporting accidents involving damage to the

[1] **Florida Mutual Aid Plan** (State Law Enforcement Policy Guidelines for Emergency Response), FDLE, June 2003.

vessel or other property. All persons, not just vessel operators, who fail to file the required written reports commit a noncriminal infraction punishable with a $50 fine.

Section 3. Amends s. 327.35215, F.S., to repeal outdated references to wildlife enforcement officers and freshwater fisheries enforcement officers. The CS repeals provisions providing that moneys collected by the Clerk of the Court for infractions committed by a violator arrested by a wildlife enforcement officer or a freshwater fisheries enforcement officer be deposited into the State Game Trust Fund. The CS clarifies that moneys collected by the Clerk of the Court for infractions committed by violators arrested by an officer employed by a state law enforcement agency must be deposited into the Marine Resources Conservation Trust Fund.

Section 4. Amends s. 327.731, F.S., to remove the violation of laws relating to muffling devices from the list of noncriminal infractions for which a $50 fine is imposed.

Section 5. Creates s. 327.461, F.S, relating to safety zones, security zones, regulated navigation areas, and naval vessel protection zones (federally designated exclusion areas). Persons may not operate a vessel, or authorize the operation of a vessel, in violation of a federally designated exclusion area as those areas are defined in and established pursuant to 33 C.F.R. part 165.

The CS establishes that the intent of the section is to provide for state and local law enforcement agencies to operate in federally designated exclusion areas. The CS authorizes state and local law enforcement personnel to enforce in federally designated exclusion areas at the request of a federal authority if state and local assistance is necessary to augment federal law enforcement efforts, and if there is a compelling need to protect the residents and infrastructure of the state. Requests for state and local law enforcement assistance must be made to the Department of Law Enforcement through the Florida Mutual Aid Plan described in s. 23.1231, F.S.

The CS provides first degree misdemeanor penalties punishable by a fine of $1,000, or imprisonment of up to 1 year, or both, for:

- Persons who operate a vessel or who authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who enter a federally designated exclusion area by swimming, diving, wading or other similar means.

The CS provides third degree felony penalties punishable by a fine of up to $5,000, or imprisonment of up to 5 years, or both, for:

- Persons who continue to operate a vessel or who continue to authorize the operation of a vessel in violation of a federally designated exclusion area, and
- Persons who remain within or who reenter a federally designated exclusion area after being warned by a law enforcement officer or competent military authority not to do so.

The CS provides that each excursion into a federally designated exclusion area is considered a separate offense. Entry into a federally designated exclusion area authorized by a port captain or the port captain's designee is not a violation.

Section 6. Amends s. 901.15, F.S., to provide that law enforcement officers do not need a warrant to arrest persons if there is probable cause to believe that a person has committed a violation of a federally designated exclusion area.

Section 7. Provides that the act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The CS may violate the "single subject" requirements of s. 6, Art. III, of the State Constitution. The CS is entitled an "Act relating to vessel safety" but authorizes the operation of vehicles without lighted lamps on the highways of the state.

Criminal offenses contained in Section 5 of the CS do not have a mens rea or scienter requirement. It is possible that the legislation may be challenged regarding whether a scienter or mens rea requirement is implied or not.

The CS indicates "[a] person may not operate a vessel, or authorize the operation of a vessel, in violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165." While this statement indicates that the federal regulation defines and establishes the referenced zones and area, it does not indicate that the federal regulation prohibits the conduct that is prohibited in the CS, rather the CS simply speaks to a "violation" of the referenced zones or area. The legislation may be challenged as violating due process for failure to provide sufficient notice of what constitutes a "violation." The CS may also be challenged as impermissibly vague and, in effect, impermissibly delegating to law enforcement agencies the Legislature's exclusive power to define crimes by leaving it to those agencies to discern what constitutes a "violation."

Staff has been apprised that the sponsor intends to file an amendment to address the potential issues described herein regarding the criminal offenses.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons found guilty of violating provisions of the CS relating to federally designated exclusion areas can expect to pay significant fines and/or be incarcerated. Persons found guilty of violating provisions relating to lighted lamps on vehicles can expect to pay a $50 fine. Persons found guilty of violating provisions relating to the required reporting of boating accidents can expect to pay a $50 fine.

C. Government Sector Impact:

Providing ongoing law enforcement assistance in federally designated exclusion areas will continue to have a significant fiscal impact on the FWCC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2762

SPONSOR: Senator Smith

SUBJECT: Driving Under the Influence

DATE: April 14, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Lang	JU	Favorable
2.	Dugger	Cannon	CJ	
3.				
4.				
5.				
6.				

I. Summary:

This bill authorizes records from the Department of Highway Safety and Motor Vehicles relating to prior convictions for driving under the influence to be admitted as evidence to establish previous convictions. This bill provides that this evidence may be contradicted or rebutted.

This bill substantially amends section 316.193 of the Florida Statutes.

II. Present Situation:

Admission of Hearsay Statements into Evidence

Both the Federal and the Florida Rules of Evidence address admissibility of hearsay evidence. Hearsay, or out of court statements made by someone other than the declarant are generally inadmissible, unless they are considered to be non-hearsay, or to come under a firmly rooted exception to the hearsay rule. The United States Supreme Court has recognized certain types of hearsay as firmly rooted exceptions to include dying declarations, cross-examined trial testimony, business records, public records, co-conspirator statements, spontaneous statements, and statements made for the purpose of obtaining medical diagnosis or treatment.[1] The hearsay statement must be inherently reliable, such as that the circumstances surrounding it or its content demonstrate it to be sufficiently reliable that adversarial testing is unnecessary.[2] This showing is independent of other corroborating evidence, which, although it bolsters the statement does nothing to address that the statement was reliably given.[3]

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[1] *See Mattox v. United States*, 156 U.S. 237, 243 (1895); *Mancusi v. Stubbs*, 408 U.S. 204, 213 (1972); *Ohio v. Roberts*, 448 U.S. 56, 66 (1980); *United States v. Inadi*, 475 U.S. 387, 394 (1986); *White v. Illinois*, 502 U.S. 346, 355 (1992).

[2] Carol A. Chase, *The Five Faces of the Confrontation Clause*, 40 House. L. Rev. 1003, 1057-1058 (2003).

[3] *See Idaho v. Wright*, 497 U.S. 805, 820-821 (1990).

The Florida Rules of Evidence provide for certain hearsay exceptions for which the availability of the declarant is immaterial, such as public records and reports.[4] This section provides in part, for admissibility of:

> Records, reports, statements reduced to writing, or data compilations, in any form of public offices or agencies, setting forth the activities of the office or agency, or matters observed pursuant to duty imposed by law as to matters which there was a duty to report...unless the sources of information or other circumstances show their lack of trustworthiness.[5]

However, such reports still must comport with authenticity. Section 90.901, F.S. provides:

> Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Authenticity is typically proven through production of a document containing an official seal, a signature by the custodian attesting to its authenticity or by an officer or employee of any official entity, a copy of an official public record, and a report or entry of a document authorized by law to be recorded or filed, and recorded or filed in a public office.[6] The Florida Rules of Evidence expressly authorize the admission of copies of public records, provided that they meet the authenticity threshold.[7] Also, copies of official public records, authenticated, meet the Best Evidence Rule, as required under s. 955.1, F.S.

Electronic recordkeeping system records are admissible if they meet the same requirements as any other type of document kept as a public record.[8]

Presumptions and Inferences

Presumptions carry greater weight than inferences. As the Eleventh Circuit Court of Appeals expressed:

> A presumption is an evidentiary device that enables the trier-of-fact to presume the existence of an element of the crime from a basic fact already proven beyond a reasonable doubt. The vast majority of presumptions are given to the jury during the instructions on the law at the close of the evidence.[9]

The United States Supreme Court stated:

> Inferences and presumptions are a staple of our adversary system of fact-finding. It is often necessary for the trier of fact to determine the existence of an element of the crime--

[4] s. 90.803 (8), F.S.
[5] s. 90.803 (8), F.S.
[6] s. 90.803 (1), (2), and (4), F.S.
[7] s. 90.955 (1), F.S.
[8] Charles W. Ehrhardt, *Florida Evidence*, vol. 1, pg. 951 (2003).
[9] *Santiago Defuentes v. Dugger*, 923 F.2d 801, 804 (11th Cir.1991)

> that is, an 'ultimate' or 'elemental' fact--from the existence of one or more 'evidentiary' or 'basic' facts.[10]

Rebuttable presumptions (or permissive inferences) are permissible in criminal cases whereas mandatory presumptions are generally not allowed. The Florida Supreme Court has interpreted Article 1, Section 9 of the Florida Constitution as prohibiting mandatory, irrebutable presumptions in criminal cases:

> Mandatory presumptions violate the Due Process Clause if they relieve the state of the burden of persuasion on an element of an offense.[11]

A mandatory presumption instructs the jury that it must infer the presumed fact if the State proves certain predicate facts.[12] In contrast, a permissive inference suggests to the jury a possible conclusion to be drawn if the State proves predicate facts, but does not require the jury to draw that conclusion.[13] The policy behind this distinction is explained by the court in *Tatum v. State* as follows:

> Because it is the prosecution's burden to prove beyond a reasonable doubt every element of a charged offense, presumptions may not be utilized in the same way against a defendant in a criminal case as might be against a defendant in a civil case.[14]

Additionally, a presumption or an inference may raise a due process challenge based on self-incrimination. Critical to a court's analysis in determining that a presumption or an inference is constitutional in a criminal case is whether a defendant must testify to rebut the presumption. In 1980, the Florida Supreme Court ruled that if a defendant can attempt to explain an inference regarding the possession of stolen goods by evidence other than his or her own testimony, the defendant is not compelled to testify.[15]

Admissibility of Department of Highway Safety and Motor Vehicles Records

For driving under the influence cases, the state is generally required to submit certified copies of each prior judgment to prove prior DUI convictions.[16] In a case heard by the Fifth District Court of Appeal, the court admitted Department of Highway Safety and Motor Vehicles records to prove license revocation, where the intent of the defendant was at issue regarding habitual offender status.[17] However, for a felony driving under the influence charge, the Third District Court of Appeal ruled that a computerized driving record was too unreliable to meet the elements of the crime as the state burden in a criminal case was to prove beyond a reasonable doubt that the defendant had at least three prior DUI convictions, and that the defendant was the actual person convicted.[18] Similarly, the Fourth District Court of Appeal precluded admission of

[10] *County Court of Ulster County, New York v. Allen*, 442 U.S. 140, 156, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979).
[11] *County Court of Ulster County, New York v. Allen*, 442 U.S. 140, 156, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979).
[12] *See Francis v. Franklin*, 471 U.S. 307, 314, 105 S.Ct. 1965, 85 L.Ed.2d 344 (1985); *County Court v. Allen*, 442 U.S. 140, 157, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979)
[13] *See Francis* at 314.
[14] 857 So.2d 331, 336-337 (Fla. 2d DCA 2003).
[15] *See Edwards v. State*, 381 So.2d 696, 697 (Fla. 1980)
[16] *See State v. Harbaugh*, 754 So.2d 691, 694 (Fla. 2000).
[17] *See Arthur v. State*, 818 So.2d 589, 592 (Fla. 5th DCA 2002).
[18] *See State v. Pelicane*, 729 So.2d 534, 535 (Fla. 3d DCA 1999).

department records to show defendant's prior convictions to establish a felony charge of driving while a license is suspended, particularly in the absence of corroborating reliable evidence.[19]

III. Effect of Proposed Changes:

This bill authorizes records from the Department of Highway Safety and Motor Vehicles relating to prior convictions for driving under the influence to be admitted as evidence to establish previous convictions. This bill provides that this evidence may be contradicted or rebutted. This bill clarifies that other evidence may be presented as well to establish prior convictions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As this bill provides for contradiction or rebuttal, it does not appear that a court would construe admission of these records as indicative of a mandatory presumption, and it would likely survive a constitutional challenge on this basis.

However, it may be difficult for a defendant to disprove such a conviction without taking the stand. Therefore, a court may find that a defendant's rights against self-incrimination are violated.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

[19] *See Williams v. State*, 865 So.2d 5, 6 (2004).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The reason for admission of department records is not to show notice on the part of the defendant, but to show that the convictions actually occurred. A court may find that they do not rise to the level of reliability as do certified copies of judgments, and are therefore insufficient substitutes for proving convictions.

VIII. Amendments:

None.

Bill No. SB 2762

Amendment No. 1

144140

CHAMBER ACTION

Senate | House

CRIMINAL JUSTICE

DATE: 4/15/04

TIME: 4:30 p.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (12) is added to section 316.193, Florida Statutes, to read:

316.193 Driving under the influence; penalties.--

(12) If the records of the Department of Highway Safety and Motor Vehicles show that the defendant has been previously convicted of the offense of driving under the influence, that evidence is sufficient by itself to establish that prior conviction for driving under the influence. However, such evidence may be contradicted or rebutted by other evidence. This presumption may be considered along with any other evidence presented in deciding whether the defendant has been previously convicted of the offense of driving under the influence.

Section 2. This act shall take effect July 1, 2004.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause

and insert:

A bill to be entitled

An act relating to driving under the influence; amending s. 316.193, F.S.; providing that a previous conviction for the offense of driving under the influence is sufficient evidence to establish such conviction; providing that such evidence may be rebutted or contradicted; providing an effective date.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 3106

SPONSOR: Senator Villalobos

SUBJECT: Juvenile Justice

DATE: April 14, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	
2.			ACJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

Chapter 985, F.S., provides the statutory framework for the juvenile justice system. Some judges, prosecutors, public defenders, and agency personnel have complained that the current organization of the chapter is confusing and difficult to use in practice. This legislation is the work product of the Delinquency Subcommittee of the Steering Committee of Families and Children in the Florida Supreme Court. The subcommittee met in 2003 to develop an initial draft reorganizing this chapter to make it more "user-friendly."

Senate Bill 3106 reorganizes parts of ch. 985, F.S., to provide a chronological presentation of the delinquency proceeding from the introduction of the child into the juvenile justice system to the case outcome. It divides the chapter into 13 parts (currently there are 5 parts). The reorganization divides larger sections into smaller parts, with more meaningful section and subheading names.

This bill reorganizes the juvenile justice chapter by renumbering, redesignating, amending, or creating many sections in chapter 985 of the Florida Statutes (see proposed changes for section numbers).

II. Present Situation:

Chapter 985, F.S., provides the statutory framework for the juvenile justice system. Some judges, prosecutors, public defenders, and agency personnel have complained that the current organization of this chapter is confusing and difficult to use in practice. (For example, in addition to the section entitled "jurisdiction" in s. 985.201, F.S., there are several other provisions relating to jurisdiction, some inconsistent, found throughout the chapter- ss. 985.23, 985.231, 985.31, and 985.313, F.S.) The Delinquency Subcommittee of the Steering Committee of Families and Children in the Florida Supreme Court, comprised of representatives from the State Attorney's

office, the Public Defender's office, the Department of Juvenile Justice, the judiciary and a law school, met in 2003 to develop an initial draft reorganizing this chapter to make it more "user-friendly."

III. Effect of Proposed Changes:

Senate Bill 3106 is primarily technical and clarifying in nature. It reorganizes parts of ch. 985, F.S., in an attempt to make the juvenile delinquency statutes more "user-friendly" for the following stakeholders: state attorneys, public defenders, children, parents, judges, employees of the Department of Juvenile Justice (DJJ), and private providers of juvenile services. It is also designed to clarify areas of inconsistency or confusion. The major changes include restructuring the sections chronologically and dividing them into smaller parts with more descriptive captions as outlined below.

Chronological Presentation- SB 3106 reorganizes many sections in ch. 985, F.S., to provide a chronological presentation of the delinquency proceeding from the introduction of the child into the system to the case outcome. It divides the chapter into the following thirteen parts (currently there are 5 parts):

1. General Provisions
2. Records and Information
3. Custody and Intake; Intervention and Diversion
4. Examinations and Evaluations
5. Detention
6. Petition, Arraignment and Adjudication
7. Disposition; Post-Disposition
8. Authority of Court over Parent or Guardian
9. Appeal
10. Transfer to Adult Court
11. Department of Juvenile Justice
12. Miscellaneous Crimes
13. Interstate Compact on Juveniles

Section Names- SB 3106 divides larger sections into smaller parts, with more meaningful section and subheading names. The sections of the bill are broken down as follows.

Section 1. Reorganizes heading titles of ch. 985, F.S.

Section 2. Renumbers ss. 985.01 to 985.001, F.S.

Section 3. Amends and renumbers ss. 985.02 to 985.002, F.S., to clarify terms in that section.

Section 4. Amends and renumbers ss. 985.03 to 985.003, F.S., to delete duplicative and otherwise clarify definitions used in this section.

Sections 5, 6, 7, and 8. Amend and renumber ss. 985.201 to 985.0201, 985.202 to 985.0202, and 985.203 to 985.0203, F.S., respectively, for clarification.

Section 9. Renumbers ss. 985.205 to 985.0205, F.S.

Section 10. Amends and renumbers ss. 985.206 to 985.0206, F.S., for clarification.

Section 11. Amends and renumbers ss. 985.216 to 985.0216, F.S., for clarification and to delete a duplicative reference.

Sections 12 and 13. Amends and renumbers ss. 985.04 to 985.2104 and 985.05 to 985.2105, F.S., respectively, for clarification.

Section 14. Renumbers ss. 985.06 to 985.2106 and 985.08 to 985.2108, F.S.

Section 15. Amends and renumbers ss. 985.207 to 985.3207, F.S., and renumbers s. 985.215(3), F.S., for clarification.

Section 16. Renumbers ss. 985.2075 to 985.32075, F.S.

Sections 17, 18, and 19. Amends and renumbers ss. 985.212 to 985.3212; 985.211 to 985.32211; and 985.301 to 985.3301, F.S., respectively, for clarification.

Section 20. Renumbers ss. 985.3065 to 985.33065, F.S.

Section 21. Amends and renumbers ss. 985.211 to 985.3307, F.S., for clarification.

Section 22. Renumbers ss. 985.209 to 985.33209, F.S.

Section 23. Amends and renumbers ss. 985.21 to 985.3321, F.S., for clarification and deletes a section moved to another part of ch. 985 (s. 985.33212), F.S.

Section 24. Amends and renumbers ss. 985.21 to 985.33212, F.S., for clarification.

Section 25. Creates ss. 985.33213, F.S., related to filing decisions, from existing text from another section of ch. 985 (s. 985.21), F.S.

Section 26. Renumbers ss. 985.303 to 985.33303, F.S.

Sections 27, 28, and 29. Amends and renumbers ss. 985.304 to 985.33304; 985.224 to 985.4224; and 985.229 to 985.4229, F.S., respectively, for clarification.

Section 30. Renumbers ss. 985.223 to 985.44223 and 985.418 to 985.44418, F.S.

Section 31. Provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is no fiscal impact anticipated because SB 3106 is largely a technical and clarifying re-organizational rewrite of ch. 985, F.S.

VI. Technical Deficiencies:

The bill only contains a portion of the rewrite of ch. 985, F.S. An amendment is recommended to complete the reorganization of ch. 985, F.S.

VII. Related Issues:

None.

VIII. Amendments:

None.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2414

SPONSOR: Senator Sebesta

SUBJECT: Uniform Traffic Control

DATE: April 6, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Eichin	Meyer	TR	Fav/1 amendment
2.	Cellon	Cannon	CJ	Pending Reconsideration
3.			FT	
4.			ATD	
5.			AP	
6.			RC	

I. Summary:

This bill authorizes the Department of Transportation (FDOT) and Department of Highway Safety and Motor Vehicles (DHSMV) to institute and operate a photo speed detection system for active construction work zones. The bill specifies how the areas shall be marked with signage to notify drivers approaching the area, specifies the content of the citations that will be mailed to the offender, specifies a process for contesting citations, authorizes FDOT and DHSMV to set standards for the equipment and personnel to be used, maintains traditional law enforcement methods but prohibits the issuing of both a Uniform Traffic Citation by a law enforcement officer and a photo citation. The bill authorizes the cameras to only take pictures of the vehicle's license plate, not the driver, and only to be used for speed detection. The bill authorizes the fine for these photo citations to be $100, plus court costs if the offender chooses to challenge the citation in traffic court. The bill authorizes FDOT and DHSMV to hire photo speed detection enforcement officers or to contract out the service. The bill specifies the county where the citation is issued shall receive 25 percent of the fine and FDOT will receive the remaining 75 percent. The cost of the program is to be paid for out of the fines collected.

This bill substantially amends the following sections of the Florida Statutes: ss. 316.003, 316.0745, 316.183, 316.640, 318.14, 318.18, and 318.21. The bill creates section 316.0795

II. Present Situation:

Current law prohibits unlawful speed in work zones and allows speeding fines to be doubled if an offender is caught speeding in a work zone when workers are present. There are many practical limitations on law enforcement while attempting to enforce speed limits in a construction zone. Typically, the roadway is obstructed by barricades, construction equipment, and construction workers, making it difficult for law enforcement to effectively operate radar or

laser speed-detection systems safely or accurately. Pursuit and apprehension of violators is also often a dangerous situation for the violator, the law enforcement officer, construction workers, and the general motoring public.

Statistics provided by the Department of Highway Safety and Motor Vehicles showed the following crash statistics for work zones in recent years:

2000 – 21 fatal crashes in work zones with 22 fatalities
2,045 crashes resulting in 2,133 injuries
2001 – 31 fatal crashes in work zones with 37 fatalities
2,943 crashes resulting in 2,986 injuries
2002 - 54 fatal crashes in work zones with 72 fatalities
3,672 crashes resulting in 3,769 injuries

At an estimated cost per work zone crash of $112,448, the FDOT has estimated that a loss of $412,909,080 occurred in 2002 alone.

Section 316.003, F.S., provides definitions relating to State Uniform Traffic Control.

Section 316.0745, F.S., provides for uniformity in the implementation of traffic control devices.

Section 316.183, F.S., establishes the conditions of lawful speed on public highways.

Section 316.640, F.S., provides for enforcement of traffic laws by state, county, municipal, and other law enforcement agencies.

Section 318.14, F.S., provides requirements for the disposition of noncriminal traffic infractions.

Section 318.18, F.S., establishes the monetary amount of civil penalties for traffic infractions.

Section 318.21, F.S., provides for the disposition of civil penalties received by county courts.

III. Effect of Proposed Changes:

Section 1 provides the popular name for the act shall be the "Active Construction Work Zone Safety Act."

Section 2 provides legislative findings and declares it is in the public interest and necessary for public safety to enforce traffic speed limits and reduce the number of violations in active construction work zones through the use of photo speed detection systems.

Section 3 amends s. 316.03, F.S., to provide additional definitions. This bill combines the definitions of "work zone area" in s. 316.003(79), F.S., and the aggravating factors of s. 318.18(3)(d), F.S., "when workers are present…", to define an "active work zone area." "Photo Speed Detection System" is defined as a device or system that records an image of the rear of vehicles violating speed limits in active construction work zones.

Section 4 amends s. 316.0745, F.S., to require photo speed detection systems to meet requirements of FDOT and DHSMV.

Section 5 creates s. 316.0795, F.S., to allow FDOT and DHSMV to develop a system of photo speed detection cameras for use in active construction work zones. The bill requires the active work zone area to be posted by warning signs, conforming to FDOT standards, notifying motorists that a photo detection system is in use. Upon the recording of a violation, a photo speed detection officer or other authorized entity will mail a citation to the registered owner of the vehicle. The bill states that the photo detection system does not preclude law enforcement officers from traditional speed enforcement methods but prohibits the issuance of both a photo speeding citation and a uniform traffic citation issued by a law enforcement officer. An offender may only be issued one or the other.

Section 6 requires the FDOT and DHSMV to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House on or before December 1, 2006, describing the performance of the photo speed detection system including recommendation for any beneficial change to the system.

Section 7 amends s. 316.183, F.S., to allow the enforcement of unlawful speed in active construction speed zones.

Section 8 amends s. 316.640, F.S., to authorize FDOT and DHSMV to hire and train photo speed detection enforcement officers who will not be authorized to carry firearms or have arrest powers. The bill also authorizes FDOT and DHSMV and expressway authorities to employ independent contractors for these positions, but these contractors must meet DHSMV and FDOT training and qualification standards.

Section 9 amends s. 318.14, F.S., to specify an operator or registered owner who violates this section may not receive a conviction for the offense, nor shall it be made part of their driving record, nor be used for setting motor vehicle insurance rates, or have points assessed against their driver's license. The bill allows the owner of the vehicle to submit an affidavit within 20 days after the receipt of the citation establishing the vehicle was not in the owner's care, custody, or control. The affidavit must provide the name, address, and, if known the driver's license number, of the other person responsible for the care, custody, or control of the vehicle at the time the violation was committed. If the vehicle was stolen, the owner may submit a copy of the police report and will not be held liable for the citation. The bill allows for the issuance of a citation to the person alleged to have been in the actual care, custody or control of the vehicle at the time offense was committed. The bill allows offenders who wish to contest the citation to do so before any judge authorized to preside over traffic infraction hearings. The judge is authorized to impose the $100 civil penalty plus court costs if the violator is found guilty.

Section 10 amends s. 318.18, F.S., to provide for a $100 civil fine for speed limit violations caught by the photo speed detection system. The double fines authorized in s. 318.18(3)(d), F.S. do not apply.

Section 11 amends s. 318.21, F.S., to authorize 25 percent of the fines collected to go to the county where the offense was committed and the remaining 75 percent to go into the State

Transportation Trust Fund. The bill specifies the money that is not needed to maintain the photo detection enforcement system shall be used for any valid transportation purpose.

Section 12 provides an effective date of July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Violators will pay a fine of $100.

C. Government Sector Impact:

The counties where the offenses occur will receive 25 percent of the collected fines. The bill does not specify what the counties must do with the money. Figures provided by the Florida Transportation Builders' Association to FDOT by one possible vendor gave the following estimates for the cost of the camera systems:

> 1 year contract - $20,000 per unit per month with a minimum of ten units. Each unit ordered over ten units is $7,500.
> 2 year contract – $12,500 per unit per month with a minimum of ten units. Each unit ordered over ten units is $7,500.
> 3 year contract – $10,000 per unit per month with a minimum of ten units. Each unit ordered over ten units is $7,500.

The costs from this particular vendor include the equipment, maintenance, support, communication links, processing of citations, customer service, and scheduling of court hearings. Their estimates assume 1,250 violations per month, or 40 per day, with a fine of $100 per citation. The revenue generated would be $125,000 per unit per month. If a one year contract for 5 units was entered into, the total revenue would be $625,000 per month. With FDOT receiving 75 percent of the revenue, this would amount to $468,750

per month and $5,625,000 per year. The cost to administer the program for one year is $1,200,000. FDOT would receive $4,425,000 in new revenue. The counties where the citations were written would receive $1,875,000 in new revenue. If the program works as intended, the cumulative cost of crash investigations and extended work schedules due to the injury and or death of motorists and/or construction workers in these active construction work zones will decrease.

These figures are estimates. Exact revenue projections are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Transportation:
The amendment clarifies a violation of s. 316.0795, F.S., is a non-criminal traffic infraction, not a moving violation.

Bill No. SB 2414

Amendment No. 1 205540

CHAMBER ACTION

Senate | House

Traveling With the Bill

The Committee on Transportation recommended the following amendment:

Senate Amendment

On page 5, lines 26 and 27, delete those lines

and insert: is a noncriminal traffic infraction, punishable as provided in s. 318.18.

Amendment Addendum Packet

for

Senate Criminal Justice Committee Packet

Committee Meeting
Tuesday, April 20, 2004
1:15 p.m. – 3:15 p.m.
37 Senate Office Building

Bill No. CS for SB 2160

Amendment No. 1 123374

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote of members present

CRIMINAL JUSTICE

DATE: 4/20/04

TIME: 8:55 a.m.

Senator Smith moved the following amendment:

Senate Amendment (with title amendment)

On page 4, line 27, through

page 5, line 20, delete those lines

and insert:

Section 2. Paragraphs (g) and (h) are added to subsection (1) of section 893.13, Florida Statutes, paragraphs (a) and (c) of subsection (7) of that section are amended, and subsection (12) is added to that section, to read:

893.13 Prohibited acts; penalties.--

(1)

(g) Except as authorized by this chapter, it is unlawful for any person to manufacture methamphetamine or phencyclidine or possess any listed chemical as defined in s. 893.033 in violation of s. 893.149 and with intent to manufacture methamphetamine or phencyclidine. If any person violates this paragraph and:

1. The commission or attempted commission of the crime occurs in a structure or conveyance where any child under 16

years of age is present, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 5 calendar years.

2. The commission of the crime causes any child under 16 years of age to suffer great bodily harm, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, the defendant must be sentenced to a minimum term of imprisonment of 10 calendar years.

(h) Except as authorized by this chapter, it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance in, on, or within 1,000 feet of the real property comprising an assisted living facility, as that term is used in chapter 400. Any person who violates this paragraph with respect to:

1. A controlled substance named or described in s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

2. A controlled substance named or described in s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

On page 1, line 12, after the semicolon,

insert:

prohibiting the sale, manufacture, delivery, or attempt to sell, manufacture, or deliver a controlled substance, in, on, or within 1,000 feet of an assisted living facility; providing criminal penalties for such offense; specifying minimum terms of imprisonment for such offense;

Bill No. CS for SB 2664

Amendment No. 1 712574

CHAMBER ACTION

Senate | House

Consideration of this amendment requires a 2/3 vote.

CRIMINAL JUSTICE

DATE: 4/20/04

TIME: 10:30 a.m.

Senator Smith moved the following amendment:

Senate Amendment

On page 7, line 17, through
page 8, line 18, delete those lines

and insert:

(1)(a) A person may not knowingly operate a vessel, or authorize the operation of a vessel, in violation of the restrictions of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as defined in and established pursuant to 33 C.F.R. part 165.

(b) The intent of this section is to provide for state and local law enforcement agencies to operate in federally designated exclusion zones specified in paragraph (a). State and local law enforcement personnel may enforce these zones at the request of a federal authority if necessary to augment federal law enforcement efforts and if there is a compelling need to protect the residents and infrastructure of this state. Requests for state and local law enforcement personnel to enforce these zones must be made to the Department of Law

Enforcement through the Florida Mutual Aid Plan described in s. 23.1231.

(2) A person who knowingly operates a vessel, or authorizes the operation of a vessel, in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who continues to operate, or authorize the operation of, a vessel in violation of the restrictions of such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after being warned against doing so, or who refuses to leave or otherwise cease violating such a safety zone, security zone, regulated navigation area, or naval vessel protection zone after having been ordered to do so by a law enforcement officer or by competent military authority, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who knowingly enters a safety zone, security zone,